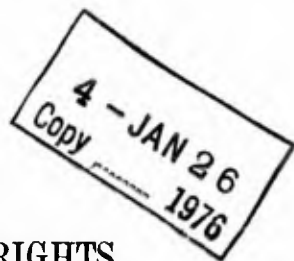




*United States Congress. House. Committee on the Judiciary.
Subcommittee on Civil and Constitutional Rights*

CIVIL RIGHTS ASPECTS OF GENERAL REVENUE SHARING

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-FOURTH CONGRESS
FIRST SESSION
ON
CIVIL RIGHTS ASPECTS OF GENERAL REVENUE SHARING



OCTOBER 8 AND 9, 1975

Serial No. 21



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1975

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CIVIL RIGHTS ASPECTS OF GENERAL REVENUE SHARING

WEDNESDAY, OCTOBER 8, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:50 a.m. in room 2237, Rayburn House Office Building, Hon. Don Edwards [chairman of the subcommittee] presiding.

Present: Representatives Edwards, Seiberling, Drinan, Badillo, Dodd, Butler, and Kindness.

Also present: Alan A. Parker, counsel; Janet M. McNair, assistant counsel; and Ray Smietanka and Kenneth N. Klee, associate counsels.

Mr. EDWARDS. The subcommittee will come to order. Today is the first of several full days of inquiry which the subcommittee will make regarding civil rights enforcement in the general revenue sharing program.

This program has, of course, recently been thrust into the public's attention for two reasons. As most of you know, payments under the program are scheduled to end at the end of calendar year 1976, and a subcommittee of the House Government Operations Committee is currently in the midst of hearings on numerous legislative proposals urging its extension.

Additionally, in recent months numerous reports have been released which make serious charges that the civil rights enforcement effort under the program is sorely inadequate. Without objection I would like at this time, to officially make a part of the subcommittee files copies of two of those reports, the report of the U.S. Commission on Civil Rights released in February 1975, "the Federal Civil Rights Enforcement Effort—1974, Volume IV, To Provide Fiscal Assistance" and the report of the Center for National Policy Review, as released in July 1975, "Civil Rights Under General Revenue Sharing"—both of which have been made available to the members of the subcommittee.

In September 1973, early in the life of the revenue sharing program, this subcommittee held hearings at which the then Director of the Office of Revenue Sharing, Mr. Graham Watt, made commitments that his office's enforcement of civil rights would indeed be vigorous.

We hope in these hearings to again hear from the Treasury Department and the Office of Revenue Sharing regarding their enforcement efforts, as well as from other groups which have been monitoring revenue sharing civil rights enforcement.

Before introducing the witnesses today, I yield to Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

Today the Subcommittee on Civil and Constitutional Rights continues civil rights oversight hearings on the general revenue sharing program.

We have been assured by the chairman that the minority witnesses may be called in a separate full day of hearings.

Part of the oversight function is to detect compliance with present law. During these hearings this subcommittee must ascertain whether civil rights enforcement in the area of general revenue sharing has been lax, sufficient, or overzealous.

In particular, attention should be focused on a regulation which permits discrimination in clear violation of the statute under the guise of making up for past discrimination.

Attention should also be focused on various court decisions which have legislated deferral remedies far beyond the scope of the statute passed by Congress.

An equally important part of the oversight function is to determine the need for new legislation or for amendments of present law. While it should be sufficient for lawmakers to insure equality by the mere insertion of nondiscrimination provisions, this subcommittee must consider the express prohibition of a regulation which, in striving to make up for past discrimination against some people, authorizes an unlawful discrimination against many innocent people.

This subcommittee should also consider an express provision indicating that negotiation and conciliation rather than confrontation and litigation is the preferable remedy in the case of noncompliance with the nondiscrimination provisions of the statute.

The irreparable harm to many innocent citizens that results from deferring or terminating funds far outweighs the compensable loss of benefits to a small group of citizens who allege they are being discriminated against.

Mr. Chairman, we must evaluate the civil rights aspects of general revenue sharing by remembering that the purpose of the program is to supply funds to recipient governments with as few strings as possible.

The program is not an omnibus civil rights bill which brings all States and local programs under the aegis of Federal regulation.

The spending power should not be used to distort the principles of federalism on which this country was founded. As President Ford said in his message to Congress on April 25, 1975, "There could be no more practical reaffirmation of the Federal compact which launched this country than to renew the program which has done so much to preserve and strengthen that compact—General Revenue Sharing."

It is my fervent hope that all members of this subcommittee will direct the course of these hearings toward that end.

Mr. Chairman, I yield back.

Mr. EDWARDS. The gentleman from Massachusetts, Mr. Drinan, has done some excellent and thorough work in this area and I yield to him.

Mr. DRINAN. I happen also to be a member of the subcommittee to which the Chairman referred, Mr. Fountain's subcommittee. We are deeply divided over the allocation formula but we are not divided over the question of civil rights. The witnesses and the members of the committee seem to be agreed that the civil rights provisions must be

tightened up and that is why I am intensely interested in the procedures today and tomorrow.

Thank you very much.

Mr. EDWARDS. Mr. Kindness?

Mr. KINDNESS. I would just like to welcome our witness this morning and look forward to your testimony. I join in the feeling that there is a need for careful review not only of how civil rights are being affected on the part of the minorities but how the civil rights of all of the citizens might be affected by changes in the provisions of the General Revenue Sharing Act as it is extended.

I think that is the light in which the Congress must act rather than to attempt to move in the direction of extending tentacles of control into every hamlet, township, county, and form of local government.

Thank you, Mr. Chairman.

I yield back.

Mr. EDWARDS. The gentleman from New York, Mr. Badillo.

Mr. BADILLO. I hope in subsequent days to have a more complete statement but at this point what I want to point out to you gentlemen is that my concern is about the indirect but yet very real forms of discrimination which take place.

The general revenue sharing program is supposed to be a substitute, at least in part, for the categorical grants. As you know, the categorical grants of the Great Society certainly were oriented particularly to the poor who happened to be predominantly black, Spanish speaking, and elderly in the central cities.

The concern that I have is that in many of these northern cities particularly after the categorical grants were withdrawn, general revenue sharing funds were used particularly for city agencies which are known to discriminate to the largest possible extent against these groups.

So the discrimination does not take place in a direct way, but by funneling the general revenue sharing funds into particular agencies which historically have eliminated minority groups, and by withdrawing the categorical grants from those minority groups you find a very clear form of discrimination when you put the total package together.

I hope it is this kind of analysis that you may have done in your review of the general revenue sharing program. It is not so much the direct application of the funds, Mr. Chairman. It is the overall result in terms of the effect it has upon the minorities and the poor who live in the central cities of this country.

Mr. EDWARDS. Thank you, Mr. Badillo.

Our witness today is Mr. Victor Lowe, Director of the General Government Office of the General Accounting Office. In November of last year the Judiciary Committee requested the GAO to conduct a study into the manner in which the Office of Revenue Sharing carries out its civil rights enforcement responsibilities. Today we will hear the findings of that study.

Mr. Lowe, we welcome you and we thank you for coming.

Before you begin, we would appreciate your introducing for us those persons who are accompanying you.

TESTIMONY OF VICTOR LOWE, DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY ALBERT HAIR, ASSOCIATE DIRECTOR; THOMAS WILLIAMSON, SENIOR ATTORNEY, GAO; ARTHUR GOLDBECK, ASSISTANT DIRECTOR; AND JERALD BOYKIN, SUPERVISORY AUDITOR, GAO

Mr. Lowe. We have Mr. Albert Hair, in charge of our work in the area of intergovernmental relations which includes general revenue sharing. He is a former city and county manager. To my immediate left, Mr. Thomas Williamson, a senior attorney in our Office of General Counsel. On my right, Mr. Arthur Goldbeck, in charge of our work in revenue sharing and Mr. Boykin, who was responsible for this particular assignment.

Mr. BUTLER. Excuse me, Mr. Lowe. The name of the first gentleman?

Mr. Lowe. Albert Hair.

Mr. Chairman, before I start, I would like to apologize for the length of the statement here this morning but I think in order to respond to the questions that the committee asked us to respond to, it is fairly lengthy.

We are pleased to appear here before the subcommittee to discuss general revenue sharing which is a 5-year program scheduled to expire on December 31, 1976.

About \$6 billion has been distributed annually to 39,000 State and local governments since the program started in 1972. Revenue sharing is a fundamentally different type of Federal assistance because it allows State and local recipients wide discretion in the use of the funds.

There are provisions in the Revenue Sharing Act, however, which do place certain restrictions and prohibitions on the use of the funds. Section 122 of the act provides that:

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under (the act).

The Secretary of the Treasury is responsible for administering the program and insuring that State and local recipients comply with this and other provisions.

By letter dated December 30, 1974, the chairman of the House Judiciary Committee asked that we assist this subcommittee in evaluating how the Office of Revenue Sharing has discharged its civil rights responsibilities.

Our statement addresses the questions raised in his letter and presents our overall views about civil rights under the program.

Our statement summarizes the information which we have gathered and we will submit a more detailed report to the Chairman in about 60 days.

As of December 31, 1974, ORS had opened 109 civil rights cases, 98 of which were based on complaints received from private citizens, national civil rights organizations, State and local interest groups, legal service groups, and local public officials. The remaining 11 cases were opened based on information from the Department of Justice on pending litigation, compliance audits by ORS, and other sources.

The number of complaints being received by ORS is increasing. As

of June 30, 1975, ORS had opened an additional 63 cases and expects to receive a total of 200 complaints in fiscal year 1976.

The increase is attributable, to some extent, to ORS's efforts to provide the general public with information about the program. Two of ORS's publications informing citizens about the complaint process were distributed to each of the 39,000 recipient governments, to many civil rights and civic interest groups, to Members of Congress, and to State and Federal agencies. Individuals were sent copies on request.

One document is entitled "General Revenue Sharing and Civil Rights," dated November 1974, and the other is entitled "Getting Involved: Your Guide to General Revenue Sharing" dated March 1974.

Mr. BUTLER. You mentioned in one place that there were so many complaints and so many cases. Are those interchangeable?

Mr. LOWE. I think that resulted from 144 complaints.

Mr. BOYKIN. Some of the cases are based on complaints that came in to ORS and some are based on compliance reviews ORS conducted and referrals ORS received from the Department of Justice.

Mr. BUTLER. If the two complaints are centered on the same basic problem, then that is one case?

Mr. LOWE. That is right. Many of the cases have more than one complaint.

Mr. BUTLER. Many of the cases have no complaints also?

Mr. LOWE. Several of them, yes, sir.

Although the annual number of complaints being received by ORS is increasing, the number is very small compared to that received by other Federal agencies.

For example, in 1974 the Equal Employment Opportunity Commission received about 57,000 complaints. HEW's Office of Civil Rights received over 1,400 complaints covering the assistance granted by three of HEW's divisions. The Department of Labor's Office of Assistant Secretary for Equal Opportunity received about 3,100 civil rights complaints.

We categorized the cases opened by ORS as of December 31, 1974, both by the type of discrimination charged such as race, national origin, and sex and by the type of activity such as employment, services, and facilities in which the alleged discrimination reportedly occurred.

Racial discrimination was alleged in 84 of the 109 cases. About one-third of these 84 complaints also alleged discrimination based on national origin and/or sex.

Employment practices were questioned in 80 cases. About one-fourth of these 80 cases also involved complaints about services and/or facilities. Furthermore, in about two-thirds of the 80 cases, the recipients' police or fire departments, or both departments were the subjects of the complaints.

We have attached at the end of this statement more detailed breakdowns of the various discrimination categories.

The ORS complaint process normally involves six stages: Complaint initiation; analysis of preliminary data; field investigation, usually consisting of a financial audit and a civil rights review; ORS's decision on the Government's compliance status; efforts to obtain voluntary compliance from the Government, or resort to involuntary compliance procedures; and case closure.

Our review of the time involved in processing the 109 cases revealed apparent excessive delays and evidence that the time required to process a complaint is increasing.

For the 43 cases that had been closed as of June 30, 1975, the average processing time was 10 months. These averages do not include the processing time for the remaining six cases carried in special status by ORS because, for example, court action may have been pending.

The shortest case was closed in 22 days because the complainant withdrew the charge. The longest case took 29 months to close and was based on the first civil rights complaint received by ORS. We identified 7 closed cases and 50 active cases where a delay of 6 months or more occurred in one or more of the major processing stages.

Mr. BUTLER. By delay, do you mean the time intervened between the time the file was opened and the case was resolved?

Mr. LOWE. Yes, sir.

Mr. BUTLER. So it would be fair to say that if they had brought all the energies of the ORS to bear and everybody was working on it and investigating and it took 6 months to resolve it, you would have reported a delay of 6 months?

Mr. LOWE. Six months in one stage and it could have been several stages. We identified seven cases where the lapse of time occurred in one or more of those six stages.

Mr. BUTLER. Did you make some effort to resolve this question whether the lapse of time was reasonable or unreasonable in a particular instance? Do you have it classified somewhere in your report?

Mr. LOWE. We have analyzed each one of those cases and in a report we will make to the committee there will be an appendix which outlines every one of those cases and what happened in each case.

So we are doing that. I don't think we have it in the statement here.

Mr. BUTLER. All right. I thank you.

Of the 109 cases opened through December 31, 1974, 66 were still open as of June 30, 1975, including the 6 which were carried in special status by ORS. Of the 43 that were closed cases as of June 30, 1975, 11 governments were found to be in noncompliance with section 122.

In another 9 cases, ORS found there was no evidence to support the complainants' allegations. Ten cases were closed due to lack of jurisdiction and three others were closed after the complainants withdrew their charges.

In the remaining 10 closed cases ORS made no formal noncompliance decision. In 4 of these cases, ORS monitored court proceedings. In the other six cases, ORS contacted the recipient and, based on responses by the governments and/or findings of its own investigations, recommended actions to satisfy section 122 requirements without issuance of a noncompliance letter.

We have attached at the end of this statement a detailed breakdown of the disposition of the 109 cases.

In its letter notifying a government of noncompliance with section 122, ORS stipulates what actions the government must take in order to be in compliance. Most governments responded by either taking the necessary corrective action or by giving ORS assurance that the requested action would be taken.

An example of corrective action frequently requested by ORS is the implementation of affirmative action employment plans to eliminate discriminatory employment practices.

As of June 30, 1975, ORS had found in 17 cases that the recipient was in noncompliance with section 122. In 11 of the 17 cases ORS subsequently determined that the recipients had achieved compliance status and the cases were closed. Four cases were pending action by ORS or the recipient government and the two other cases had been referred to the Department of Justice by ORS.

Monitoring is normally used by ORS to assure that after a case is closed, the assurances provided by a recipient government to correct past discrimination or avoid future discrimination are eventually translated into actions.

For example, in cases involving employment discrimination ORS typically requested that the recipient government submit quarterly status reports on its affirmative action plan. ORS asked that the reports designate by name, race, national origin, and sex all persons recruited, hired, or promoted during each quarter by the government's departments covered by the affirmative action plan.

ORS also asked that these reports include the date of hire or promotion and the salary and job title for all employees in the Department.

We identified seven cases where the files indicated that ORS would monitor the progress in implementing a government's plans and projects prior to June 30, 1975. For the most part, we found considerable delays and a lack of follow up by ORS in its monitoring efforts. Actual monitoring through June 30, 1975, consisted of ORS receiving reports from four of seven governments. In only one of these four cases was there evidence that ORS had reviewed the information submitted.

In the remaining three cases, there was no evidence that the monitoring actions had been taken as of June 30. For example, in one case the government was asked to submit quarterly status reports beginning in January 1975 on its efforts to eliminate employment discrimination.

We found no record of submission of the reports by the recipient government or evidence of follow up ORS. In the other two cases, ORS planned to conduct onsite inspections to monitor the implementation of the corrective actions, but we found no evidence in the files that the onsite inspections in either case had been conducted through June 30, 1975.

ORS requires that the chief executive officer of each recipient government sign a compliance assurance statement indicating the government's intention to comply fully with section 122 and other provisions of the Revenue Sharing Act. On June 16, 1975, ORS established new special assurance procedures whereby, in addition to the standard compliance assurance statement, a recipient government previously found in noncompliance must submit evidence that similar violations will not occur in the use of funds for future entitlement periods.

As of June 30, ORS told two recipient governments with unresolved section 122 violation that they would be monitored in accordance with the new special assurance program.

ORS requested that both governments:

(1) Adopt affirmative action plans for their agencies receiving revenue sharing funds during fiscal year 1976, and

(2) Provide ORS with quarterly status reports on progress in implementing these plans.

Mr. KLEE. This new special assurance program would appear on its face to be more stringent than prior compliance assurance procedures. Have you had any evaluation since June 30 that would show that this had increased the effectiveness of ORS's monitoring?

Mr. GOLDBECK. That program has so recently gone into effect, we have not covered it. There were 14 governments required to send in reports for the entitlement period. But we have not had a chance to evaluate those because many of the letters just came in. One of them just came in within the last couple of days.

Mr. KLEE. Does the new procedure on its face appear to be more stringent and likely assure compliance than the previous procedure?

Mr. GOLDBECK. It depends on how it is implemented. If the Office of Revenue Sharing really makes the government submit something that would overcome what had previously been done, it would be more stringent. There are some ways it may not achieve what it appears it will.

That is, for example, a government may come in with an assurance which could thereby avoid the previous contention of discrimination.

Ms. McNAIR. Mr. Goldbeck, one other question. As I understand the way in which the new assurance provision works, if a recipient jurisdiction is able to assure ORS that it will not use the new entitlement funds in an area similar to the area that has formerly been found to be discriminatory, then it can receive the money without correcting the past discriminatory activity. Is that your understanding of the new procedure?

Mr. GOLDBECK. I don't want to make a positive statement but that is my current understanding.

Mr. LOWE. ORS dismissed 10 cases because of a lack of jurisdiction. Six of these were dismissed because ORS decided that revenue sharing funds were not used in the areas complained about. In five of these six cases ORS either referred the case to another Federal agency, or some other Federal agency was already investigating the case.

In the sixth case ORS's letter advising the complainant to contact OEO could not be delivered by the post office.

In three of the other four cases, ORS cited a lack of jurisdiction because the discrimination complaint was not based on race, color, national origin, or sex which are the areas specified in section 122. In these three cases, the complaints were based on age, geographical location, and status as an ex-convict. Then, in the 10th case, ORS determined that it lacked jurisdiction because the alleged discrimination occurred before passage of the Revenue Sharing Act.

These criteria used by ORS to resolve civil rights complaints are derived from many sources, including the U.S. Constitution, the several civil rights laws, Presidential executive orders, court decisions, and the Revenue Sharing Act itself.

With the exception of the Revenue Sharing Act these same laws and other provisions constitute criteria which also apply to the programs of other Federal agencies. A search made of the Department of Justice's computerized data bank identified well over 100 laws with civil rights provisions.

This proliferation of civil rights provisions has created a complex and sometimes confusing situation for administrators, auditors, recipient governments, and others who must deal with them.

Aggregately, these laws, executive orders, court decisions, and other criteria, prohibit discrimination based on such reasons as race, color, sex, creed, national origin, age, being handicapped, and political affiliation, but we are not aware of a single law which covers all of these prohibitions.

Mr. KLEE. Is there an additional category of religion you have omitted?

Mr. LOWE. There could very well be.

Mr. HAIR. Creed is the word used.

Mr. LOWE. For example the Revenue Sharing Act prohibits discrimination on the basis of sex, but the 1964 Civil Rights Act does not. Furthermore, activities in which discrimination is prohibited include public education, housing, public employment, public facilities, contract awards, and many others, but the extent of coverage under a given law may be broad or limited.

For example, the Revenue Sharing Act prohibits discrimination in public employment in any activity funded in whole or part with revenue sharing funds but discrimination in public employment is prohibited under title VI of the Civil Rights Act of 1964 only where employment is the primary purpose of the Federal financial assistance involved.

Further complexity in civil rights administration and enforcement occurs when an agency is authorized under one particular law to exercise the powers and functions specified under another law. The Revenue Sharing Act, for example, granted the Secretary of the Treasury the option to exercise the powers and functions contained in title VI of the Civil Rights Act of 1964 to enforce nondiscrimination.

Some civil rights organizations argue that the Secretary of the Treasury has the authority to defer a recipient government's revenue sharing funds on the basis of a probable cause determination of discrimination by the Secretary pending a full administrative hearing or a decision by a court.

ORS, on the other hand, believes that it should not defer funds before there has been a finding of discrimination as a result of a due process administrative or court proceeding.

To gain some insight into how other agencies deal with deferral of Federal funds to recipients against which allegations of noncompliance with discrimination provisions are lodged, we talked with officials of HEW, LEAA, HUD, the Department of Transportation, and the Office of Federal Contract Compliance.

The discussions revealed generally that once the agencies have awarded grants to recipients, the funds for those grants are not withheld prior to an administrative hearing, the opportunity for a hearing, or a decision of the courts. However, various Federal agencies provide in their regulations for the deferral, prior to a formal hearing, of grant applications for lack of satisfactory nondiscrimination assurances.

We found evidence that ORS had notified or attempted to notify the complainants, where appropriate, of the disposition of their grievances in 40 of the 43 closed cases. In the other three cases, notification had not been made because of apparent oversight by ORS.

We contacted the complainant or the complainant's representative in 21 of the 43 closed cases. The complainants we contacted were generally dissatisfied with the disposition of their grievances, although a few expressed various degrees of satisfaction.

The basic reason for the dissatisfaction by most of the complainants was their belief that discrimination still existed in the areas complained about.

Some of the complainants, or their representatives, were also dissatisfied with the way ORS handled their particular cases. Reasons the complainants gave for dissatisfaction with ORS' complaint processing included:

1. ORS' failure to conduct a thorough investigation.
2. ORS not requiring a formal signed agreement from the Government specifying all actions which would be undertaken to achieve compliance and the type of status reports which would be submitted periodically.
3. ORS changing its position in a case originally requiring several actions by a government to meet compliance and later considering the government to be in compliance even though the government said it would fulfill only a portion of the requirements.

Mr. BUTLER. I would like a little help here about whether these Federal agencies provide in their regulations for deferral prior to a formal hearing. Is there any difference in the legislation between those which provide in their regulations for deferral prior to formal hearings and those which do not?

Mr. WILLIAMSON. The legislation?

Mr. BUTLER. The statute under which they are operating. In both instances are we not proceeding under the same statutory authorization?

Mr. WILLIAMSON. You have to look at it. There are two different types of withholding. The statutes uniformly say including the revenue sharing statute and title VI incorporated in it that once the entitlement has been OK'd or once the grant has been OK'd, funds cannot be then cut off without a due process hearing. But the courts have also said that the provisions of title VI, which govern most of these programs allow holding up an application for funds that have not yet been granted; that holding up an application for the grant is not a refusal to continue assistance within the meaning of the statute. The courts have said that they are still considering whether they will refuse to continue assistance.

Therefore a due process hearing is not required then in that instance.

Mr. BUTLER. Are these differences in policy made at the administrative level in which the statutory expression is the same?

Mr. WILLIAMSON. The statutory expression is the same but the courts have interpreted that particular statute, title VI, as allowing deferral.

Mr. BUTLER. The court's opportunity to construe arises for regulations which are different in different agencies. Is that true?

Mr. WILLIAMSON. I think the regulations now reflect the court decisions.

Mr. BUTLER. The court decision came before these regulations which provide for deferral.

Mr. WILLIAMSON. I don't know exactly which came first but the court decisions are now in line with those regulations.

Mr. BUTLER. Since you have undertaken in this report today to go into this point, would you develop it a little more when your formal report comes to us?

Mr. LOWE. Yes, sir.

Mr. KLEE. I have a question about the present scope of the remedy under title VI. Am I correct that section 602 of title VI limits the deferral to the program or activity found to be in noncompliance and not to all programs or activities within a particular jurisdiction found to be in noncompliance?

Mr. WILLIAMSON. That is correct.

Mr. KLEE. Does the term deferral appear in any of the statutes that have been promulgated or is it strictly limited to regulations?

Mr. WILLIAMSON. I won't say in any of the statutes. I can't recall one.

Mr. KLEE. Thank you.

Mr. BUTLER. We have inquired as to whether the complainants were satisfied. How about the complainees? Do you have any rundown as to their reaction to the manner in which ORS handled these?

Mr. LOWE. You mean the recipient government?

Mr. BUTLER. Yes.

Mr. LOWE. No, we don't.

Mr. BUTLER. Do you agree with me that that is appropriate to a thorough audit?

Mr. LOWE. It could be, sir. I think in this case we were sticking specifically to what the committee had asked us to look into.

Mr. BUTLER. Well, to the extent that I have got the authority, I would like this phase of it also developed in your final report. And particularly, I would like the view of the recipient governments as to the administrative burden or lack of it developed in an effort to determine compliance or lack of it.

Mr. LOWE. We can sure try to do that. I would think in the same 21 locations as those 21 complainants that we were able to contact.

Mr. BUTLER. You are the auditors. You know how to get a representative sampling. I will not be critical of that.

Mr. LOWE. Thank you.

ORS has enhanced cooperation and coordination with civil rights and public interest groups by:

1. Participating with these groups in meetings around the country;
2. Providing the groups with ORS publications; and
3. Encouraging the groups to assist in monitoring compliance by recipients.

The extent of coordination and cooperation ORS had received may be reflected in the large percentage of cases that were opened based on complaints received from the civil rights and public interest groups.

For example, of the 144 complainants listed in the 109 civil rights cases we reviewed, 52 were national civil rights organizations such as the NAACP and the National Organization for Women, and 50 were public interest or legal service groups.

ORS has had extensive dealings with some Federal agencies, particularly the Department of Justice's Civil Rights Division and Law Enforcement Assistance Administration, the Department of Housing and Urban Development, the Department of Health, Education, and Welfare, and the Equal Employment Opportunity Commission. However, we found no evidence that these agencies operated under a formal, coordinated program.

ORS had signed cooperative agreements with HEW and the EEOC to provide for the exchange of information and to avoid duplication of investigative work. ORS' agreement with HEW also calls for further discussion between the two agencies which would result in HEW representing ORS in compliance audits.

ORS has obtained from the EEOC employment data which is being used in a test program that will compare a government's employment data with labor force statistics. ORS and the EEOC also agreed to jointly publish a "Guidebook on Equal Employment for Public Employees" which is expected to be printed in January 1976.

The publication is to assist employers in complying with civil rights provisions of the act. It will also include a section on the nonemployment aspects of the law.

ORS and the Justice Department's Civil Rights Division have entered into a formal agreement which allows ORS and the Division to avoid duplicate Federal investigations of State and local governments. ORS and the Division were already participating in joint reviews and sharing information in certain cases.

No formal agreement exists between ORS and LEAA, but during its investigations the LEAA inquires about whether revenue sharing funds were used in the area covered by the LEAA grant. Where revenue sharing funds are involved, LEAA provides ORS with information on the cases.

ORS and HUD have been negotiating a formal agreement which would provide for the exchange of information.

The Acting Director of ORS expressed the opinion that most Federal agencies would just as soon administer their own programs because they each have their own special interest and program knowledge is helpful in discrimination determinations.

He added, however, that because of the limited enforcement powers an individual agency may have, the agency seeks to strengthen its enforcement potential by uniting its efforts with those of other agencies.

Mr. BUTLER. Going back to the page immediately preceding, talking about the guidebook on equal employment for public employees to be printed in January 1976, this publication to assist employers to comply with employment provisions of the act. Are we referring to the Revenue Sharing Act?

Mr. LOWE. Yes, sir.

Mr. BUTLER. Where is the mandate in the statute for the Revenue Sharing Office to be spending money educating people as to the civil rights provisions relating to compliance with the act, to educate individuals to complain?

I want to know where that authority appears in the legislation. I have no quarrel with it, but I would like to know where it is.

Mr. LOWE. Mr. Williamson?

Mr. WILLIAMSON. I can't pick it up right away, Mr. Butler, but I am sure there is a provision in there that says the secretary will publish regulations and take steps to carry out the statute.

It would presumably come under that.

Mr. BUTLER. Well, since we are auditing the expenditure of public funds, would you agree that an appropriate audit would involve annotating the source for the expenditure of funds?

Mr. LOWE. Yes.

Mr. BUTLER. Would you include that in your report?

Mr. LOWE. Yes.

Mr. KLEE. You said the Acting Director of the Office of Revenue Sharing stated that because of the limited enforcement powers an individual agency may have, the Agency seeks to strengthen its enforcement potential by uniting their efforts with those of other agencies.

Did the Acting Director of the Office of Revenue Sharing state that the Office of Revenue Sharing has limited enforcement powers?

Mr. HAIR. I talked to the Acting Director about that particular portion of the statement. I think he was speaking in general terms. He was indicating that his Agency had sought these cooperative agreements and I think in this particular case he was not making reference to limited enforcement powers, but perhaps staff and other types of communications devices that might be used to exchange information.

Mr. KLEE. To put this remark in context it would be fair to say he was not speaking about the limited power granted to him by the present statute but rather to the current administrative support he has to implement those powers; is that correct?

Mr. HAIR. I think that is a reasonable assumption.

We did not probe it that much, but I did not get the impression that he was complaining about a lack of legal authority although there may be some portions of the act he was seeking improvement in.

Mr. BADILLO. Was that his own personal opinion? Did he go out and talk to these other agencies to see if they would be willing to enter into an agreement or did he just give his opinion?

Mr. GOLDBECK. I think he has talked with some—

Mr. BADILLO. As of December 1974. ORS has signed only one agreement with the Equal Employment Opportunity Commission. What others have they signed?

Mr. GOLDBECK. Well, they have agreements with EEOC, HEW and—

Mr. BADILLO. There are many agencies. Did they go and seek out these other agencies or is it just as you say here that in his opinion they don't want to cooperate? Has he been turned down by the others?

Mr. GOLDBECK. They are in the process of negotiating additional agreements. He did make a point to us also in discussions with him that prior to the time that these agreements were negotiated, there had been no real formal cooperative agreements between any Federal agencies.

Mr. BADILLO. My point is that if you have one with EEOC entered in December 1974, and since then you have entered one with HEW, you have one with Justice, what is the basis for his opinion that the others would just as soon not do it?

It seems to me that the evidence indicates that the others would just as soon do it if ORS went out and sought to enter into such agreements.

Mr. GOLDBECK. These agreements generally provide for exchange of information and perhaps doing some investigative work for the other agency. What he was concerned with there was the actual granting of the determination of discrimination to another agency.

In other words, HUD decided that somebody is discriminating in the use of revenue sharing. That was where he was drawing the line. He felt that each agency because of their own knowledge of their program should make that final determination.

Mr. BADILLO. Obviously each agency would just as soon administer its own program. Naturally, but that is not to say that they would be unwilling to work with the Office of Revenue Sharing.

All I am trying to bring out is that the fellow's attitude is that these fellows don't want to work with us, he won't go out and firmly try to seek agreements.

The attitude seems to me rather negative. It seems that he does not really want to go out and affirmatively seek the help of these agencies. I am not talking about handing over the program to them or the taking over of their programs. But I am speaking about getting their cooperation.

Mr. GOLDBECK. I think perhaps we ought to give the Office of Revenue Sharing some credit because they are the first Agency that has ever negotiated any formal agreement in this civil rights area. Prior to last December, there just were none. For example, HEW did not have one with HUD.

Mr. BADILLO. It is not such a radical concept that Federal agencies should cooperate with each other.

Mr. GOLDBECK. That is right.

Mr. LOWE. I will proceed with my statement.

ORS has several mechanisms it uses to aid in the identification of recipient governments in which civil rights problems exist even though no complaints have been filed against the governments.

Coordination and cooperation with other Federal agencies to exchange information is one of the mechanisms which has caused ORS to open civil rights cases.

A second one is the establishment of formal agreements between ORS and State civil rights agencies. The agreements provide that the State agency should notify ORS of cases in which revenue sharing funds may have been used in a discriminatory manner.

As of September 25, 1975, ORS had entered into agreements with 11 State agencies. The agreements have not been in existence long enough for us to assess their effectiveness.

Mr. BUTLER. Would you tell us which States those are please?

Mr. BOYKIN. Maine, West Virginia, Illinois, the District of Columbia, Ohio, Connecticut, Maryland, Minnesota, South Dakota, Delaware, and Alaska.

Mr. LOWE. Another mechanism used by ORS to check a government's compliance status is the system of State and local auditors. In October 1973, ORS issued an audit guide and standards for revenue sharing recipients to assist State and local auditors and public accountants in understanding the special requirements for audits of revenue sharing funds and to establish audit standards and procedures.

In its publication "General Revenue Sharing and Civil Rights" dated November 1974 ORS states that its audit guide is the first of any type that requires auditors to report extensively on civil rights.

The guide includes a list of audit procedures which must be performed by auditors if the audit is to be accepted in lieu of an ORS audit.

ORS had received about 1,600 audit reports prepared by State and local auditors and public accountants through December 31, 1974. ORS officials said that none of these reports mentioned a possible violation of the nondiscrimination provision of the act.

It is quite evident that reliance so far on the State and local audit system to identify possible civil rights violations has been ineffective.

In December 1974 ORS began conducting compliance audits on a sample basis. The audits include financial, civil rights, and other compliance aspects of the general revenue sharing program. As of April 22, 1975, ORS had conducted 22 audits and 12 reviews of workpapers prepared by independent public accountants under its sample audit plan.

Four of the 22 audits and 1 of the 12 independent public accountant reviews disclosed possible civil rights violations which were referred to the ORS Civil Rights Branch for investigation. No cases had been opened on these governments as of August 21, 1975.

Mr. KLEE. The reports have not mentioned violations of nondiscrimination provisions. Does that in and of itself show that the auditing procedure has been ineffective?

Mr. LOWE. Well, that is based on an assumption that if you did 1,600 you would report something and I think—in a few minutes I will get to a point in my statement wherein we have done review work in 26 local governments throughout the country which gives you some indication of the type of thing that might be mentioned in the audit report.

It might not be a noncompliance case; it might be one. If you followed the audit procedures and you looked at that, you would call attention to it.

Mr. KLEE. You are not operating on the assumption that the State and local government is innocent of discrimination unless proven otherwise?

Mr. LOWE. No, sir.

Mr. BADILLO. How many of those who are State and local auditors are employed by the State and local governments and how many of them, if any, were independent certified public accountants who have a license at stake?

Mr. LOWE. The audit guidelines put out by the Office of Revenue Sharing indicate that in order for an audit to be acceptable to them, it has to cover certain things.

Mr. BADILLO. I understand. I am a certified public accountant myself. I understand that. But if I am not writing a report as a certified public accountant and I sign my name to it, then if that report is wrong I can lose my license.

If I am hired by, say, Mr. Beame in New York and I am an employee and I sign my report as an employee of the office of the comptroller, my license is not involved. Neither is my license involved if I am writing a report for the comptroller of the State of New York.

It makes a difference whether I am working for someone or whether I am an independent auditor because then I am going to be reporting to my boss. I would like to know which are the reports of the public employees and which ones are the independent accountants?

Mr. LOWE. I don't have a breakdown right now but on the next page we point out something that touches right on that. As of April 22, 1975, ORS conducted 22 audits and 12 reviews of work papers prepared by independent public accountants.

Four of the 22 audits and 1 of the 12 independent public accountant reviews exposed possible civil rights violations which were referred to the ORS Civil Rights Branch for investigation. The auditor did not have to go beyond the normal audit.

He has to, if the audit itself is acceptable to ORS, to make it acceptable to ORS.

Mr. BADILLO. I have no problem with that. I have a problem with the fellow just working for the State and local official. It is most unlikely that he or she would criticize his or her employers.

If they did they might not last very long.

Mr. LOWE. I know in New York State the auditor occupies a pretty secure position and is really relatively independent of the agency he would be auditing. This is the same in a number of other States.

Mr. BUTLER. As a matter of fact, it is analogous to the position of the General Accounting Office, is it not?

Mr. LOWE. In many States that is true. In some it is not.

Mr. BADILLO. In many of the municipalities, the auditor might be just part of the team.

Mr. LOWE. That can be true also.

Mr. BADILLO. If you can provide it, I would like to get a breakdown of those who are independent auditors and those who are auditors on municipal and State payrolls.

[GAO later checked with ORS's chief auditor and submitted the following information for the record: The chief auditor at ORS told us on October 13, 1975, that the 1,600 reports could not be readily identified because they have been filed alphabetically among the total of 4,211 such reports which have been received by ORS as of September 30, 1975.]

Mr. EDWARDS. Mr. Lowe, did the ORS charge these 1,600 auditors with the definite responsibility of reporting on civil rights enforcement?

Mr. LOWE. No, sir, the charge in effect was that if you perform an audit and use the guidelines—the guidelines that they have published—then that audit would be accepted in lieu of an independent audit by ORS. That is the only charge.

In other words, the auditor can stop at the end of a normal financial audit he would make and not do these other steps and that would not be an acceptable audit to ORS.

Mr. EDWARDS. Therefore in its publication, "General Revenue Sharing and Civil Rights, November 1974," ORS is wrong when it states that its audit guide is the first of any type that requires auditors to report extensively on civil rights?

Mr. LOWE. Maybe we can explain that a little clearer.

Mr. GOLDBECK. I think technically that may be a true statement because their guide does have certain steps in it that require an audit of that name—of civil rights. Their audit guide also says if that audit

that the independent accounting firm or the State government is doing on a local government, if that is to be accepted by the Office of Revenue Sharing in lieu of an audit they might do, they must follow the steps in the guide.

If an auditor does not follow the steps, then the Office of Revenue Sharing would not accept the audit.

Mr. KINDNESS. Mr. Chairman, one point. I wonder if we could be provided with the information later as to how many of the 1,600 cases involve the extra guidelines points?

Perhaps none of them did but if that is the case, that would be pertinent to know.

Mr. LOWE. Yes, sir. Mr. Kindness. We will analyze those 1,600 reports if we can and see how that worked out.

Ms. McNAIR. You indicate that cases have not yet been opened in the five audit situations where possible civil rights violations were noted.

Mr. LOWE. Some cases, yes.

Mr. BUTLER. This goes back to the question I asked. No cases had been opened. Does that mean these disclosed possible civil rights violations were noted and ignored or that an investigation is proceeding or what?

Mr. BOYKIN. What it means is that ORS has not gotten around to opening cases on these. It does not mean that they have been ignored. If there is some of that evident in the case, I don't know of it. But we are not saying that here.

Ms. McNAIR. What have they done in those five situations?

Mr. BOYKIN. Well, we talked to ORS about these investigations. We were told that one would result in a case and would show up on the August 31 active list, but it did not show up. But they are expected to show up as ORS analyzes them.

Mr. BUTLER. You are not suggesting here that they are ignoring them? You are suggesting that procedurally it takes longer than August 31 to get around to it?

Mr. LOWE. At the time we put this together, we did not have any more information as to the outcome of those particular ones.

Mr. BUTLER. What brought you to the view that possible civil rights violations had been disclosed?

Mr. LOWE. This was the conclusion reached by ORS as a result of its review of these particular cases.

Mr. BUTLER. So it is not your view but their view.

Mr. LOWE. Yes.

Mr. KLEE. Of complaints filed on and after April 22, 1975, have cases been opened on any of those or is this indicative of the normal delay for the complaint initiated cases as well as the audit cases?

Mr. GOLDBECK. Their practice is to open a case as soon as the complaint comes in. When it is received from outside of their office, they open a complaint. These cases were situations where they initiated them internally. I think it would be fair to say that they are still trying to determine whether or not there is sufficient evidence available to establish a case.

Mr. KLEE. What does opening a case mean? If a complaint comes in and a file is opened, they do not send out their 15 day letters immediately, do they?

They put the case into the file, correct?

Mr. GOLDBECK. Right.

Mr. KLEE. They put their audit in a different file and that is not technically a case, is that right?

Mr. GOLDBECK. That is correct. I think in the case of a complaint, they feel they must respond to the complainant. So they have to do something.

They immediately establish a case. But in the case of their internal audits it may be that there is no complainant. They may never have any external corresponding now involved at all.

Ms. McNAIR. There appears to be different treatment when their own special internal audit review is involved—

Mr. LOWE. The auditors in performing this work red-flagged these particular audits and referred them to the ORS civil rights branch for investigation to see if there is a case on them.

Ms. McNAIR. Doesn't ORS state that they are using these 1,600 audits which have been supposedly performed in accordance with its Audit Guide as part of its civil rights monitoring process?

Mr. LOWE. We indicated we don't think it is very effective.

Mr. KINDNESS. Going back to page 4 of your statement that the ORS complaint process normally involves six stages. If I understand correctly, what has just been stated in this exchange, the cases we are talking about on page 17 are half way through those six stages, is that correct?

Mr. LOWE. They have not really been opened as a case yet.

Mr. KINDNESS. There is a complaint initiation in a sense resulting from the audit?

Mr. LOWE. Yes, sir, an internal possible case.

Mr. KINDNESS. There is an analysis of preliminary data or this would not have been mentioned here. There is a field investigation usually consisting of a financial audit and a civil rights audit review. That is inherent in the audit. That is three steps through the six stages that would be parallel to the complaint process.

It seems to me we are playing around with words but I would like to understand better what the statement means "no cases had been opened on these governments as of August 31, 1975."

Mr. LOWE. That means there had been no formal cases reported. This thing had been referred to their civil rights branch for investigation at that time.

Mr. KINDNESS. Does it mean that no efforts to obtain voluntary compliance from the governments involved have occurred and does it mean that no involuntary compliance procedures have been initiated?

The final stage of these six steps is closure of the case which does not seem very significant. I am having a good bit of difficulty understanding why that statement is in the testimony.

Mr. GOLDBECK. We wanted to point out that they only looked at a very small number of governments. They came up with some indications of potential discrimination. We are trying to contrast that with the 1,600 external reviews made in which they found no violation or potential for violation at all.

In other words, we are sort of trying to point out that there should be some likelihood that the 1,600 would have had several cases also.

Mr. KINDNESS. This is for the purpose of comparing?

Mr. GOLDBECK. Yes, sir.

Mr. KINDNESS. The comparison is based on the assumption that discrimination does exist, that it is bound to.

Mr. LOWE. I would think that would be true, yes, enough so they would have to open a case and do an investigation of some of the 1,600.

Mr. BUTLER. That is the presumption of innocence we were talking about before. You made no effort to determine really the validity of the possible civil rights violations and in these audits under its audit plan, did you go back and try to determine whether there were possible civil rights violations that they did not pick up and include in this never-never-land of unopened cases?

Mr. GOLDBECK. We did not look at these cases. Our cut off rate was December 31. They had as much evidence in these cases as they do a complaint coming in from an external source.

We think they should have treated them the same as a complaint coming from outside their office. When they first began the program they had trouble keeping track of the cases.

This prolonged the process.

I think the same thing might happen here if they don't start to control those cases. Maybe none of them are really discrimination cases but at least they ought to have some way of controlling these so they can resolve that question and decide whether or not there is discrimination.

Mr. BUTLER. There is almost always the normal shakedown problem, is there not? Your brief commentary that no case had been opened is not intended to indicate a lack of motivation on the part of the Office of Revenue Sharing to comply with the law, is it?

Mr. GOLDBECK. No, sir.

Mr. BADILLO. ORS conducted an audit. They took 22 cases and they examined those and they found that in 4 of them there were possible civil rights violations, is that right?

Mr. LOWE. Yes.

Mr. BADILLO. That works out to 18 percent. Isn't that a very high percentage? Doesn't that suggest that their sample should be larger because that is a very high percentage?

Mr. GOLDBECK. I agree. That is also why we feel that out of that 1,600 there must have been at least 1.

Mr. BADILLO. If you have 4 out of 22, 18 percent, then take 18 percent of 2,200 and see what that is. What that sample suggests is maybe the whole thing should be reviewed. In any audit procedures an 18 percent violation record would be a bell of alarm to revise the whole business.

Mr. LOWE. We don't know whether their sample was a loaded sample. We don't know. We were using that to contrast with the 1,600.

Mr. BADILLO. We agree that with the FBI, if you had 18 percent of the FBI cases opened for no reason at all, everybody would be very concerned. Similarly, in these cases, 18 percent, that seems to be a great cause for concern.

Mr. KLEE. These 22 audits conducted by the Office of Revenue Sharing are separate from the 1,600 State and local audits are they not?

Mr. LOWE. Yes.

Mr. KLEE. If ORS had to go out and conduct audits, did you ask them whether they had any basis to focus in on areas where they particularly suspected discrimination based on complaints that they had and is that why they conducted these 22 audits?

Mr. LOWE. No. We did not ask them that particular question. Maybe we could do this for the record. In our report or for the record, we will furnish information on these particular cases that we are talking about, what the final disposition of them was, whether or not they did open a case or what.

Mr. KLEE. Can you correlate the 22 audits to see if there was evidence of discrimination before the cases were opened?

Mr. LOWE. Yes.

Mr. DOPP. I apologize for arriving late. It seems to me from your statement that there are serious problems in compliance, staff, review, just a variety of problems that arise in this particular area. Would it be fair to say it is impossible for you or for ORS to make the determination that there is not discrimination occurring in these programs?

You can't say categorically one way or another, can you?

Mr. LOWE. No; we can't. We would have one problem doing a review of 38,000 State and local governments. That is one reason that they made the attempt to rely on audits performed by people other than ORS when they published this guideline.

I would think they would have a much greater chance of success in the normal financial-type audit that most of the people are used to performing on their own anyway. They have extended procedures covering civil rights and compliance with the law.

Mr. DRINAN. I wonder if the witnesses would finish and then we go through the auditing process?

Mr. SEIBERLING. There is one clarifying question. I would like to ask.

Mr. DRINAN. There are several issues that should be brought out and counsel and all of us should have the 5 minutes.

Mr. EDWARDS. We will move along but I will recognize Mr. Seiberling.

Mr. SEIBERLING. On page 16 where you refer to the 1,600 audit reports not mentioning a violation, are you tending to indicate that they are not mentioning also possible violations or just not finding violations?

In your reference to ORS audits, you point out that they found 5 possible violations whereas on page 16 you said none mentioned violations. I want to make sure that we are not talking about apples and oranges.

Mr. LOWE. We mean possible violations there.

The effectiveness of the new procedure cannot be assessed until it is fully established and implemented. Much of its success when implemented will depend upon the carrying out of the field investigations. The Acting Director stated that he expects to get other Federal agencies to share in conducting these field visits.

The legacy of what is now recognized as discriminatory employment practices appeared evident from the composition of the work forces of many of the 26 governments on which we conducted case studies in a recent review.

The report we issued to the Congress in July 1975 is entitled "Case Studies of Revenue Sharing in 26 Local Governments," GGD-75.77. A similar review would probably reveal the same results for other recipient governments. Although each government was unique, we made some broad generalizations:

In most of the counties, a higher percentage of females was employed by the county than the percentage of females in the civilian labor force. The opposite was true for cities. The cities typically had large sanitation, police, and fire protection services which employed a high percentage of males. The counties, on the other hand, often had large health and hospital, welfare, and social service functions which employed a high percentage of females;

Six of the governments had no Spanish-surnamed or black employees in their work force. In these cases, there were no or very few blacks or Spanish-surnamed people living in the jurisdiction. In most of the governments, the percentage of blacks on the Government's payroll exceeded or closely approximated the percentage of blacks in the civilian labor force. The opposite was true for Spanish-surnamed;

Higher percentages of women and minorities were in the governments' lower level positions, such as clerical or manual labor jobs;

Police and fire protection employees were predominantly white males, while black males were concentrated in sanitation and service maintenance activities; and

The percentage of black and Spanish-surnamed persons hired during the year ended June 30, 1974, generally approximated or exceeded the percentage these groups represented of the recipient's total work force.

We found substantial evidence that employment practices, particularly among larger jurisdictions, have changed and are changing to include more minorities and females. Changes are occurring from both self-initiated programs and as a result of legal actions.

If you would like I will make a copy of that report and any of the other 26 supporting reports for your file.

Mr. EDWARDS. Yes. We appreciate that. Thank you.

Mr. Lowe. In making this observation we did not intend to imply that civil rights problems faced by local governments and by essentially all American institutions have been solved. It was clear that much remained to be done.

Mr. Chairman, before I conclude I would like to make several observations about civil rights enforcement by the Federal Government and the Office of Revenue Sharing.

Differences exist between the numerous civil rights provisions and regulations that apply to various Federal programs. As examples the Revenue Sharing Act prohibits discrimination in the use of revenue sharing funds on the basis of race, color, national origin, and sex.

The Comprehensive Employment and Training Act of 1973, as amended (CETA), also prohibits these four types of discrimination but also prohibits discrimination in the use of CETA funds on the basis of creed, age, political affiliation, and belief. The Rehabilitation Act of 1973 prohibits discrimination against handicapped individuals.

These differences can confuse the citizen when he or she is attempting to ascertain his or her rights under various Federal programs and can complicate the Federal administrator's efforts to enforce discrimination provisions.

In January 1975 when we began our review of the Office of Revenue Sharing's civil rights enforcement activities, we found that ORS had

inadequate controls to assure that complaints would be processed in a timely manner.

ORS has recently established new procedures and periodic reports which it feels will establish overall control of the complaints when they are received and alert the compliance staff of delinquent actions so that complaints can be processed faster.

Also ORS plans to increase its current staff of five civil rights specialists by five additional specialists in fiscal year 1976.

Because these changes have not as yet been fully implemented we would not assess the effect they will have on complaint processing.

In our opinion an adequate civil rights enforcement program includes both the investigation and resolution of complaints that are received and the conduct of selected reviews and/or audits to determine compliance with prohibitions against discrimination.

Last December ORS began conducting compliance audits on a sample basis and is currently developing a computerized analysis of about 4,500 government's employment data to identify governments in which civil rights problems may exist.

With the expected increase in complaints during fiscal year 1976 and ORS' plans to conduct compliance audits and investigate governments identified by the computerized analysis, it is obvious that the increased civil rights staff of 10 specialists will have a substantial amount of work.

During the past 2½ years, we have issued five reports to the Congress on the operation of the revenue sharing program. I have attached to this statement a list of the five reports and a description of other reviews we have in process. This work has led us to certain overall observations which I would like to mention before concluding.

If the Congress wishes to provide financial assistance to State and local governments under a program which has as its purpose simply giving recipients discretion in the use of the funds provided, then general revenue sharing is certainly a way to achieve this objective. We believe, however, that the act's requirements that the funds be used for certain priority expenditures and that the recipient must comply with certain other expenditure restrictions are not compatible with the revenue sharing concept.

Further, as we have previously reported recipients can arrange to use revenue sharing funds in ways required by the act and then use their own displaced funds in other areas where the restrictions on the use of revenue sharing funds are not observed.

We have recommended that most of the expenditure restrictions be eliminated if the program is renewed.

There are, however, two requirements—civil rights and citizen participation—which we believe should be retained and made more effective.

The existing revenue sharing legislation prohibits discrimination in any program or activity that is wholly or partially funded with revenue sharing. Because recipient governments can avoid directly using the funds in a program or activity where potential discrimination problems exist, we suggest that any act renewing revenue sharing provide that a government receiving revenue sharing could not discriminate in any of its programs or activities regardless of the source of funding; and revenue sharing funds could be withheld, after a due

process finding of discrimination, pending acceptable plans or actions to correct discriminatory practices regardless of whether revenue sharing funds were involved.

The Revenue Sharing Act requires that recipient governments publish their planned and actual uses of revenue sharing funds. When a recipient government spends revenue sharing funds for activities that were previously financed, or would have been financed, from other revenues, considerable latitude exists for use of funds thus freed.

The impact of revenue sharing, in this situation, would occur where the freed funds are used, and reports which describe only the uses of revenue sharing funds could be misleading.

We have done several studies which show that.

In our September 9, 1975, report to the Congress entitled "Revenue Sharing: An Opportunity for Improved Public Awareness of State and Local Government Operations," we recommended that a government receiving revenue sharing should be required to provide the public with:

(1) Comparative financial data on the sources and uses of all of its funds showing its overall plan and results of operations; and (2) an opportunity to express their views on the government's plans and activities.

These changes would give revenue sharing a clear threefold objective of: (1) allowing recipient governments to use the funds in areas they consider to have the greatest need; (2) increasing public awareness of, and opportunities for citizen participation in, the determination of these needs; and (3) assuring that every citizen has an equal opportunity to benefit from the services provided to fulfill these needs.

Mr. Chairman, that concludes my prepared statement. My associates and I would be happy to respond to any questions you may have.

[The prepared statement of Mr. Lowe follows:]

STATEMENT OF VICTOR L. LOWE, DIRECTOR, GENERAL GOVERNMENT
DIVISION, U.S. GENERAL ACCOUNTING OFFICE

We are pleased to appear before this Subcommittee to discuss general revenue sharing, which is a 5-year program scheduled to expire on December 31, 1976. About \$6 billion has been distributed annually to 39,000 State and local governments since the program started in 1972.

Revenue sharing is a fundamentally different type of Federal assistance because it allows State and local recipients wide discretion in the use of the funds. There are provisions in the Revenue Sharing Act, however, which do place certain restrictions and prohibitions on the use of the funds. Section 122 of the act provides that:

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under (the act).

The Secretary of the Treasury is responsible for administering the program and ensuring that State and local recipients comply with this and other provisions.

By letter dated December 30, 1974, the Chairman of the House Judiciary Committee asked that we assist this Subcommittee in evaluating how the Office of Revenue Sharing has discharged its civil rights responsibilities. Our statement addresses the questions raised in his letter and presents our overall views about civil rights under the program. Our statement summarizes the information which we have gathered and we will submit a more detailed report to the Chairman in about 60 days.

How many and what kind of civil rights complaints have been received by ORS through December 31, 1974?

As of December 31, 1974, ORS had opened 109 civil rights cases, 98 of which were based on complaints received from private citizens, national civil rights organizations, State and local interest groups, legal service groups, and local public officials. The remaining 11 cases were opened based on information from the Department of Justice on pending litigation, compliance audits by ORS, and other sources.

The number of complaints being received by ORS is increasing. As of June 30, 1975, ORS had opened an additional 63 cases and expects to receive a total of 200 complaints in fiscal year 1976. The increase is attributable, to some extent, to ORS' efforts to provide the general public with information about the program. Two of ORS' publications informing citizens about the complaint process were distributed to each of the 39,000 recipient governments, to many civil rights and civic interest groups, to members of Congress, and to State and Federal agencies. Individuals were sent copies on request. One document is entitled "General Revenue Sharing and Civil Rights," dated November 1974; and the other is entitled "Getting Involved: Your Guide to General Revenue Sharing," dated March 1974.

Although the annual number of complaints being received by ORS is increasing, the number is very small compared to that received by other Federal agencies. For example, in 1974 the Equal Employment Opportunity Commission received about 57,000 complaints. HEW's Office of Civil Rights received over 1,400 complaints covering the assistance granted by three of HEW's divisions. The Department of Labor's Office of Assistant Secretary for Equal Opportunity received about 3,100 civil rights complaints.

We categorized the cases opened by ORS as of December 31, 1974, both by the type of discrimination charged such as race, national origin, and sex and by the type of activity such as employment, services, and facilities in which the alleged discrimination reportedly occurred. Racial discrimination was alleged in 84 of the 109 cases. About one-third of these 84 complaints also alleged discrimination based on national origin and/or sex.

Employment practices were questioned in 80 cases. About one-fourth of these 80 cases also involved complaints about services and/or facilities. Furthermore, in about two-thirds of the 80 cases, the recipients' police or fire department, or both departments were the subjects of the complaints.

We have attached at the end of this statement more detailed breakdowns of the various discrimination categories.

How are the complaints processed and how quickly are they investigated?

The ORS complaint process normally involves 6 stages: complaint initiation; analysis of preliminary data; field investigation, usually consisting of a financial audit and a civil rights review; ORS' decision on the government's compliance status; efforts to obtain voluntary compliance from the government, or resort to involuntary compliance procedures; and case closure.

Our review of the time involved in processing the 109 cases revealed apparent (excessive) delays and evidence that the time required to process a complaint is increasing. For the 43 cases that had been closed as of June 30, 1975, the average processing time was 10 months. The sixty active cases were already pending an average of 12 months. (These averages do not include the processing time for the remaining 6 cases carried in special status by ORS because, for example, court action may have been pending.) The shortest case was closed in 22 days because the complainant withdrew the charge. The longest case took 29 months to close and was based on the first civil rights complaint received by ORS. We identified 7 closed cases and 50 active cases where a delay of 6 months or more occurred in 1 or more of the major processing stages.

What disposition has been made of complaints received through December 31, 1974?

Of the 109 cases opened through December 31, 1974, 66 were still open as of June 30, 1975, including the 6 which were carried in special status of ORS. Of the 43 that were closed cases as of June 30, 1975, 11 governments were found to be in noncompliance with section 122. In another 9 cases, ORS found there was no evidence to support the complainants' allegations. Ten cases were closed due to lack of jurisdiction and 3 others were closed after the complainants withdrew their charges.

In the remaining 10 closed cases ORS made no formal noncompliance decision. In 4 of these cases, ORS monitored court proceedings. In the other 6 cases, ORS contacted the recipient and, based on responses by the governments and/or findings of its own investigations, recommended actions to satisfy section 122 requirements without issuance of a noncompliance letter.

We have attached at the end of this statement a detailed breakdown of the disposition of the 109 cases.

Are formal compliance agreements entered into with recipient governments that have been the subject of complaints? What is the extent and nature of ORS monitoring of such agreements?

In its letter notifying a government of noncompliance with section 122, ORS stipulates what actions the government must take in order to be in compliance. Most governments responded by either taking the necessary corrective action or by giving ORS assurance that the requested action would be taken. An example of corrective action frequently requested by ORS is the implementation of affirmative action employment plans to eliminate discriminatory employment practices.

As of June 30, 1975, ORS had found in 17 cases that the recipient was in non-compliance with section 122. In 11 of the 17 cases ORS subsequently determined that the recipients had achieved compliance status and the cases were closed. Four cases were pending action by ORS or the recipient government and the 2 other cases had been referred to the Department of Justice by ORS.

Monitoring is used by ORS to assure that after a case is closed, the assurances provided by a recipient government to correct past discrimination or avoid future discrimination are eventually translated into actions. For example, in cases involving employment discrimination, ORS typically requested that the recipient government submit quarterly status reports on its affirmative action plan. ORS asked that the reports designate by name, race, national origin, and sex all persons recruited, hired, or promoted during each quarter by the government's departments covered by the affirmative action plan. ORS also asked that these reports include the date of hire or promotion and the salary and job title for all employees in the department.

We identified seven cases where the files indicated that ORS would monitor the progress in implementing a government's plan and projects prior to June 30, 1975. For the most part, we found considerable delays and a lack of follow-up by ORS in its monitoring efforts. Actual monitoring through June 30, 1975, consisted of ORS receiving reports from 4 of the 7 governments. In only 1 of these 4 cases was there evidence that ORS had reviewed the information submitted.

In the remaining 3 cases, there was no evidence that the monitoring actions had been taken as of June 30. For example, in one case the government was asked to submit quarterly status reports beginning in January 1975 on its efforts to eliminate employment discrimination. We found no record of submission of the reports by the recipient government or evidence of follow-up by ORS. In the other 2 cases, ORS planned to conduct on-site inspections to monitor the implementation of the corrective actions, but we found no evidence in the files that the on-site inspections in either case had been conducted through June 30, 1975.

ORS requires that the chief executive officer of each recipient government sign a compliance assurance statement indicating the government's intention to comply fully with section 122 and other provisions of the Revenue Sharing Act. On June 16, 1975, ORS established new special assurance procedures whereby, in addition to the standard compliance assurance statement, a recipient government previously found in noncompliance must submit evidence that similar violations will not occur in the use of funds for future entitlement periods. As of June 30, ORS told 2 recipient governments with unresolved section 122 violations that they would be monitored in accordance with the new special assurance program. ORS requested that both governments (1) adopt affirmative action plans for their agencies receiving revenue sharing funds during fiscal year 1976 and (2) provide ORS with quarterly status reports on progress in implementing these plans.

In how many instances have complaints been dismissed because there was a determination that revenue sharing funds had not been used in the acts complained of? Is there evidence that such dismissed complaints have been certified to other appropriate agencies for investigation?

ORS dismissed 10 cases because of a lack of jurisdiction. Six of these were dismissed because ORS decided that revenue sharing funds were not used in the areas complained about. In 5 of these 6 cases ORS either referred the case to another Federal agency, or some other Federal agency was already investigating the case. In the sixth case, ORS' letter advising the complainant to contact OEO could not be delivered by the post office. In 3 of the other 4 cases, ORS

cited lack of jurisdiction because the discrimination complaint was not based on race, color, national origin, or sex which are the areas specified in section 122. In these 3 cases, the complaints were based on age, geographical location, and status as an ex-convict. In the tenth case, ORS determined that it lacked jurisdiction because the alleged discrimination occurred before passage of the Revenue Sharing Act.

What criteria has ORS followed in resolving complaints and is the criteria consistent with that applied by other Federal agencies?

The criteria used by ORS to resolve civil rights complaints are derived from many sources, including the U.S. Constitution, the several civil rights laws, Presidential Executive Orders, court decisions, and the Revenue Sharing Act itself. With the exception of the Revenue Sharing Act, these same laws and other provisions constitute criteria which also apply to the programs of other Federal agencies. A search made of the Department of Justice's computerized data bank identified well over 100 laws with civil rights provisions.

This proliferation of civil rights provisions has created a complex, and sometimes confusing, situation for administrators, auditors, recipient governments, and others who must deal with them. Aggregately, these laws, executive orders, court decisions, and other criteria prohibit discrimination based on such reasons as race, color, sex, creed, national origin, age, being handicapped, and political affiliation but we are not aware of a single law which covers all of these prohibitions. For example, the Revenue Sharing Act prohibits discrimination on the basis of sex, but the 1964 Civil Rights Act does not. Furthermore, activities in which discrimination is prohibited include public education, housing, public employment, public facilities, contract awards, and many others, but the extent of coverage under a given law may be broad or limited. For example, the Revenue Sharing Act prohibits discrimination in public employment in any activity funded in whole or in part with revenue sharing funds but discrimination in public employment is prohibited under Title VI of the Civil Rights Act of 1964 only where employment is the primary purpose of the Federal financial assistance involved.

Further complexity in civil rights administration and enforcement occurs when an agency is authorized under one particular law to exercise the powers and functions specified under another law. The Revenue Sharing Act, for example, granted the Secretary of the Treasury the option to exercise the powers and functions contained in Title VI of the Civil Rights Act of 1964 to enforce non-discrimination.

Some civil rights organizations argue that the Secretary of the Treasury has the authority to defer a recipient government's revenue sharing funds on the basis of a probable cause determination of discrimination by the Secretary pending a full administrative hearing or a decision by a court. ORS, on the other hand, believes that it should not defer funds before there has been a finding of discrimination as a result of a due process administrative or court proceeding.

To gain some insight into how other agencies deal with deferral of Federal funds to recipients against which allegations of noncompliance with discrimination provisions are lodged, we talked with officials of HEW, LEAA, HUD, the Department of Transportation, and the Office of Federal Contract Compliance.

The discussions revealed generally that once the agencies have awarded grants to a recipient, the funds for those grants are not withheld prior to an administrative hearing, the opportunity for a hearing, or a decision of the courts. However, various Federal agencies provide in their regulations for the deferral, prior to a formal hearing, of grant applications for lack of satisfactory non-discrimination assurances.

Are complainants notified of the disposition of their grievances?

We found evidence that ORS had notified or attempted to notify the complainants of the disposition of their grievances in 40 of the 43 closed cases. In the other 3 cases, notification had not been made because of apparent oversight by ORS.

In those cases or matters which ORS had closed, have complainants been satisfied that the practices which formed the basis for their grievances have or are being eliminated?

We contacted the complainant or the complainant's representative in 21 of the 43 closed cases. The complainants we contacted were generally dissatisfied with the disposition of their grievances, although a few expressed various degrees of satisfaction. The basic reason for the dissatisfaction by most of the complainants was their belief that discrimination still existed in the areas complained about.

Some of the complainants, or their representatives, were also dissatisfied with the way ORS handled their particular cases. Reasons the complainants gave for dissatisfaction with ORS' complaint processing included:

- (1) ORS failure to conduct a thorough investigation.
- (2) ORS not requiring a formal signed agreement from the government specifying all actions which would be undertaken to achieve compliance and the type of status reports which would be submitted periodically.
- (3) ORS changing its position in a case by originally requiring several actions by a government to meet compliance and later considering the government to be in compliance even though the government said it would fulfill only a portion of the requirements.

Extent of coordination and cooperation ORS has obtained from its efforts to encourage the assistance of civil rights organizations, public interest groups, and other Federal agencies to help ensure compliance with civil rights.

ORS has enhanced coordination and cooperation with civil rights and public interest groups by (1) participating with these groups in meetings around the country; (2) providing the groups with ORS publications; and (3) encouraging the groups to assist in monitoring compliance by the recipients.

The extent of coordination and cooperation ORS had received may be reflected in the large percentage of cases that were opened based on complaints received from the civil rights and public interest groups. For example, of the 144 complainants listed in the 109 civil rights cases we reviewed, 52 were national civil rights organizations such as the NAACP and the National Organization for Women and 50 were public interest or legal service groups.

ORS has had extensive dealings with some Federal agencies, particularly the Department of Justice's Civil Rights Division and Law Enforcement Assistance Administration (LEAA), the Department of Housing and Urban Development (HUD), the Department of Health, Education, and Welfare (HEW), and the Equal Employment Opportunity Commission (EEOC). However, we found no evidence that these agencies operated under a formal, coordinated program.

ORS had signed cooperative agreements with HEW and the EEOC to provide for the exchange of information and to avoid duplication of investigative work. ORS' agreement with HEW also calls for further discussion between the two agencies which would result in HEW representing ORS in compliance audits. ORS has obtained from the EEOC employment data which is being used in a test program that will compare a government's employment data with labor force statistics. ORS and the EEOC also agreed to jointly publish a "Guidebook on Equal Employment for Public Employees" which is expected to be printed in January 1976. The publication is to assist employers in complying with civil rights provisions of the act. It will also include a section on the nonemployment aspects of the law.

ORS and the Justice Department's Civil Rights Division have entered into a formal agreement which allows ORS and the Division to avoid duplicate Federal investigations of State and local governments. ORS and the Division were already participating in joint reviews and sharing information in certain cases.

No formal agreement exists between ORS and LEAA, but during its investigations the LEAA inquires about whether revenue sharing funds were used in the area covered by the LEAA grant. Where revenue sharing funds are involved, LEAA provides ORS with information on the cases.

ORS and HUD have been negotiating a formal agreement which would provide for the exchange of information.

The Acting Director of ORS expressed that most Federal agencies would just as soon administer their own programs because they each have their own special interests and program knowledge is helpful in discrimination determinations. He added, however, that because of the limited enforcement powers an individual agency may have, the agency seeks to strengthen its enforcement potential by uniting its efforts with those of other agencies.

What actions have been taken by ORS to systematically identify recipient governments in which civil rights problems may exist even though no complaints have been filed against the governments? What is GAO's assessment of the extent to which such problems may exist without having come to the attention of ORS?

ORS has several mechanisms it uses to aid in the identification of recipient governments in which civil rights problems exist even though no complaints have been filed against the governments. Coordination and cooperation with other Federal agencies to exchange information is one of the mechanisms which has

caused ORS to open civil rights cases. A second one is the establishment of formal agreements between ORS and State civil rights agencies. The agreements provide that the State agency would notify ORS of cases in which revenue sharing funds may have been used in a discriminatory manner. As of September 25, 1975, ORS had entered into agreements with 11 State agencies. The agreements have not been in existence long enough for us to assess their effectiveness.

Another mechanism used by ORS to check a government's compliance status is the system of State and local auditors. In October 1973, ORS issued an "Audit Guide and Standards for Revenue Sharing Recipients" to assist State and local auditors and public accountants in understanding the special requirements for audits of revenue sharing funds and to establish audit standards and procedures. In its publication "General Revenue Sharing and Civil Rights" dated November 1974, ORS states that its audit guide is the first of any type that requires auditors to report extensively on civil rights. The guide includes a list of audit procedures which must be performed by auditors if the audit is to be accepted in lieu of an ORS audit.

ORS had received about 1,600 audit reports prepared by State and local auditors and public accountants through December 31, 1974. ORS officials said that none of these reports mentioned a violation of the nondiscrimination provision of the act. It is quite evident that reliance so far on the State and local audit system to identify possible civil rights violations has been ineffective.

In December 1974, ORS began conducting compliance audits on a sample basis. The audits include financial, civil rights, and other compliance aspects of the general revenue sharing program. As of April 22, 1975, ORS had conducted 22 audits and 12 reviews of workpapers prepared by independent public accountants under its sample audit plan. Four of the 22 audits and 1 of the 12 independent public accountant reviews disclosed possible civil rights violations which were referred to the ORS Civil Rights Branch for investigation. No cases had been opened on these governments as of August 31, 1975.

The Acting Director of ORS said in a recent meeting with us that ORS is developing additional procedures which will help to identify governments in which civil rights problems may exist. ORS plans to make a computerized analysis of the employment data reported by about 4,500 governments to the EEOC. The analysis would identify the 300 governments with the greatest disparity between the number of minorities and females in the civilian labor force and the governments' work forces and the greatest disparities in the actual position status of minorities and females by government department.

The effectiveness of the new procedure cannot be assessed until it is fully established and implemented. Much of its success when implemented will depend upon the carrying out of the field investigations. The Acting Director stated that he expects to get other Federal agencies to share in conducting these field visits.

The legacy of what is now recognized as discriminatory employment practices appeared evident from the composition of the work forces of many of the 26 governments on which we conducted case studies in a recent review. The report we issued to the Congress in July 1975 is entitled "Case Studies of Revenue Sharing in 26 Local Governments." GGD-75-77. A similar review would probably reveal the same results for other recipient governments. Although each government was unique, we made some broad generalizations:

In most of the counties, a higher percentage of females was employed by the county than the percentage of females in the civilian labor force. The opposite was true for cities. The cities typically had large sanitation, police, and fire protection services which employed a high percentage of males. The counties, on the other hand, often had large health and hospital, welfare, and social service functions which employed a high percentage of females;

Six of the governments had no Spanish-surnamed or black employees in their work force. In these cases, there were no or very few blacks or Spanish-surnamed people living in the jurisdiction. In most of the governments, the percentage of blacks on the government's payroll exceeded or closely approximated the percentage of blacks in the civilian labor force. The opposite was true for Spanish-surnamed;

Higher percentages of women and minorities were in the government's lower level positions, such as clerical or manual labor jobs;

Police and fire protection employees were predominately white males, while black males were concentrated in sanitation and service maintenance activities; and

The percentage of black and Spanish-surnamed persons hired during the year ended June 30, 1974, generally approximated or exceeded the percentage these groups represented of the recipient's total work force.

We found substantial evidence that employment practices, particularly among larger jurisdictions, have changed and are changing to include more minorities and females. Changes are occurring from both self-initiated programs and as a result of legal actions. In making this observation, we did not intend to imply that civil rights problems faced by local governments and by essentially all American institutions have been solved. It was clear that much remained to be done.

Mr. Chairman, before I conclude I would like to make several observations about civil rights enforcement by the Federal Government and the Office of Revenue Sharing. Differences exist between the numerous civil rights provisions and regulations that apply to various Federal programs. As examples, the Revenue Sharing Act prohibits discrimination in the use of revenue sharing funds on the basis of race, color, national origin, and sex. The Comprehensive Employment and Training Act of 1973, as amended, (CETA) also prohibits these four types of discrimination but also prohibits discrimination in the use of CETA funds on the basis of creed, age, political affiliation, and belief. The Rehabilitation Act of 1973 prohibits discrimination against handicapped individuals. These differences can confuse the citizen when he or she is attempting to ascertain his or her rights under various Federal programs and can complicate the Federal administrators' efforts to enforce discrimination provisions.

In January 1975 when we began our review of the Office of Revenue Sharing's civil rights enforcement activities, we found that ORS had inadequate controls to assure that complaints would be processed in a timely manner. ORS has recently established new procedures and periodic reports which it feels will establish overall control of the complaints when they are received and alert the compliance staff of delinquent actions so that complaints can be processed faster. Also, ORS plans to increase its current staff of 5 civil rights specialists by 5 additional specialists in fiscal year 1976. Because these changes have not, as yet, been fully implemented, we could not assess the effect they will have on complaint processing.

In our opinion, an adequate civil rights enforcement program includes both the investigation and resolution of complaints that are received and the conduct of selected reviews or audits to determine compliance with prohibitions against discrimination. Last December ORS began conducting compliance audits on a sample basis and is currently developing a computerized analysis of about 4,500 governments' employment data to identify governments in which civil rights problems may exist. With the expected increase in complaints during fiscal year 1976 and ORS' plans to conduct compliance audits and investigate governments identified by the computerized analysis, it is obvious that the increased civil rights staff of 10 specialists will have a substantial amount of work.

During the past 2½ years, we have issued 5 reports to the Congress on the operation of the revenue sharing program. I have attached to this statement a list of the 5 reports and a description of other reviews we have in progress. This work has led us to certain overall observations which I would like to mention before concluding.

If the Congress wishes to provide financial assistance to State and local governments under a program which has as its purpose simply giving recipients discretion in the use of the funds provided, then general revenue sharing is certainly a way to achieve this objective. We believe, however, that the act's requirements that the funds be used for certain "priority expenditures" and that the recipient must comply with certain other expenditure restrictions are not compatible with the revenue sharing concept. Further, as we have previously reported, recipients can arrange to use revenue sharing funds in ways required by the act and then use their own displaced funds in other areas where the restrictions on the use of revenue sharing funds are not observed. We have recommended that most of the expenditure restrictions be eliminated if the program is renewed.

There are, however, two requirements—civil rights and citizen participation—which we believe should be retained and made more effective.

The existing revenue sharing legislation prohibits discrimination in any program or activity that is wholly or partially funded with revenue sharing. Because recipient governments can avoid directly using the funds in a program

or activity where potential discrimination problems exist, we suggest that any act renewing revenue sharing provide that a government receiving revenue sharing could not discriminate in any of its programs or activities regardless of the source of funding; and revenue sharing funds could be withheld, after a due process finding of discrimination, pending acceptable plans or actions to correct discriminatory practices regardless of whether revenue sharing funds were involved.

The Revenue Sharing Act requires that recipient governments publish their planned and actual uses of revenue sharing funds. When a recipient government spends revenue sharing funds for activities that were previously financed, or would have been financed, from other revenues, considerable latitude exists for use of funds thus freed. The impact of revenue sharing, in this situation, would occur where the freed funds are used, and reports which describe only the uses of revenue sharing funds could be misleading.

In our September 9, 1975, report to the Congress entitled "*Revenue Sharing: An Opportunity for Improved Public Awareness of State and Local Government Operations*," we recommended that a government receiving revenue sharing should be required to provide the public with (1) comparative financial data on the sources and uses of all of its funds showing its overall plan and results of operations; and (2) an opportunity to express their views on the government's plans and activities.

These changes would give revenue sharing a clear threefold objective of (1) allowing recipient governments to use the funds in areas they consider to have the greatest need, (2) increasing public awareness of, and opportunities for citizen participation in, the determination of these needs, and (3) assuring that every citizen has an equal opportunity to benefit from the services provided to fulfill these needs.

Mr. Chairman, that concludes my prepared statement. My associates and I would be happy to respond to any questions you may have.

TYPES OF DISCRIMINATION CHARGES

Charge	Total	Percent
Race.....	57	52
Race and national origin.....	12	11
Race and sex.....	6	6
Race, national origin, and sex.....	9	8
National origin.....	6	6
National origin and sex.....	2	2
Sex.....	11	10
Nonsection 122 charge.....	6	6
Total.....	109	100

1 Numbers do not add due to rounding.

TYPES OF ACTIVITIES IN WHICH DISCRIMINATION ALLEGEDLY OCCURRED

Type of activity	Total	Percent
Employment.....	54	50
Employment and services.....	12	11
Employment and facilities.....	6	6
Employment services and facilities.....	4	4
Employment and contract awards.....	2	2
Employment and awards of revenue sharing money.....	1	1
Employment services facilities and revenue sharing planning boards.....	1	1
Services.....	10	9
Services and facilities.....	7	6
Services and contract awards.....	1	1
Facilities.....	5	5
Revenue sharing advisory board.....	1	1
Other.....	5	5
Total.....	109	100

1 Numbers do not add due to rounding.

ORS DISPOSITION OF 1973-74 CIVIL RIGHTS CASES

[As of June 30, 1975]

	Closed	Active	Special status	Total
Finding of noncompliance.....	11	4	2	17
No violation.....	9			9
No formal noncompliance decision by ORS.....	10			10
Lack of jurisdiction.....	10			10
Complaint withdrawn.....	3			3
Pending.....		56	4	60
Total.....	43	60	6	109

¹ In 4 of these cases, ORS monitored court proceedings. In the other 6 cases, ORS contracted the recipient governments and, based on responses by the governments and/or findings of its own investigations, recommended actions to satisfy sec. 122 requirements without the issuance of a noncompliance letter.

ATTACHMENT IV

SUMMARY OF REVENUE SHARING REVIEWS COMPLETED AND IN PROCESS AT
OCTOBER 8, 1975

ISSUED REPORTS

Revenue Sharing: Its Use By and Impact on State Governments (B-146285 dated August 2, 1973)

Revenue Sharing: Its Use By and Impact on Local Governments (B-146285 dated April 25, 1974)

Revenue Sharing and Local Government Modernization: A Conference Report (GGD-75-60 dated April 17, 1975)

Case Studies of Revenue Sharing in 26 Local Governments (GGD-75-77 dated July 21, 1975)

Revenue Sharing: An Opportunity for Improved Public Awareness of State and Local Government Operations (GGD-76-2 dated September 9, 1975)

REVIEWS IN PROCESS

Title: Review of Tax Data Used in Allocating Revenue Sharing Funds

Results to date: Current definition of "adjusted taxes," which are used in formula to allocate revenue sharing funds, does not indicate a local government's total revenue efforts. Report will probably recommend that the Congress consider adding other types of local government revenues (such as payments in lieu of taxes, profits transferred from utility operations, and service charges which often are assessed in lieu of taxes) to the adjusted tax figures used to allocate revenue sharing.

Report target date: October 1975.

Title: Review of Compliance Program of the Office of Revenue Sharing

Results to date: Report will describe number, quality, and effectiveness of compliance audits completed by the Office of Revenue Sharing, State audit groups, CPA firms, and others. The report will assess the meaningfulness of certain restrictions on the use of the funds and the value of auditing for compliance with these restrictions.

Report target date: December 1975.

Title: Review of Civil Rights Enforcement Activities of the Office of Revenue Sharing (Review requested by House Committee on the Judiciary)

Results to date: Report will analyze Office of Revenue Sharing's civil rights enforcement activities showing number, basis, origin, and disposition of cases. The Office of Revenue Sharing's criteria and processes will be compared with those of other agencies.

Report target date: November 1975.

Title: Review of Effects of Revenue Sharing on Certain Townships and Counties

Results to date: Functions, revenues, and expenditures of many midwestern townships have decreased relative to other forms of local government. Revenue sharing, as a new source of revenue, may have slowed this trend. Many townships are now performing essentially one function such as road repair or poor relief. These single-purpose townships are more like special districts (which do not receive revenue sharing) than like general purpose governments. Report will probably present several alternatives for the Congress to consider as means of determining which governments should be eligible to receive revenue sharing.

Report target date: December 1975.

Title: Review of Revenue Sharing Funds Received by Indian Tribes.

Results to date: Report will probably recommend that allocation of revenue sharing funds be made based on tribe's share of State population rather than its share of county's area population. Report will show that requirement that tribes use funds in county from which funds are derived eliminates tribe's ability to use funds for greatest needs, and the requirement does not apply to other forms of local government. Report will recommend that this requirement be eliminated from act.

Report target date: November 1975.

Mr. EDWARDS. We will be operating under the 5-minute rule and I recognize the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. This is an interesting report but it does not answer several of the questions I have. Of all the Federal programs, I think the criticism of this one has been absolutely devastating on the civil rights issue. I think it is fair to say that one person took the position that we need no enforcement.

Until recently that has been the policy. As you people know, there has been a coalition of civil rights groups, including the League of Women Voters, that has put out a devastating assault upon revenue sharing. They concluded that revenue sharing has financed widespread discrimination with a multibillion-dollar program in public employment and local services thus what you are proposing gives me some trouble.

As you know, the basic problem is fungibility. I don't like the word. I use the word in the material here prepared by counsel on non-traceability or invisibility.

The GAO made this recommendation on page 22 of the testimony that the priorities be abolished. I don't know how they came to that or even if they have the right to do that. That is up to Congress and they said that Congress intends this to be given in a lump sum for the communities to do what they want.

That is not the intent of the act and I am not certain that the act permits or was intended to permit the local community to reduce their taxes and use the Federal money to make up.

In any event, there is no firm recommendation by GAO except to wipe out all the categories and somehow on pages 22, 23 and 24, this is supposed to resolve the whole thing. I don't see how this bottom line follows from what you said before.

The fact of the matter is that unless we have, as the Civil Rights Commission recommended 200 or 300 examiners, people going out there with an affirmative program, nothing is going to happen.

For example, from my own area, the Boston Fire Department continues to get revenue sharing funds even though they were adjudged to be discriminating by a U.S. district court. It was appealed and affirmed, and it is still in litigation and the funding goes on.

There is a clear case where the ORS has been negligent.

Mr. BUTLER. Will the gentleman yield?

Mr. DRINAN. Yes.

Mr. BUTLER. I am not presuming to pass judgment on whether or not they discriminate in Boston.

Mr. DRINAN. I assure you they do.

Mr. BUTLER. Does the Boston Fire Department have revenue sharing funds?

Mr. DRINAN. They do, categorically, several million.

Mr. BUTLER. How has the complaint been processed to date?

Mr. DRINAN. I see nothing in the documents that indicates that. I have made inquiries but I have inconclusive evidence. All I know is they are getting revenue funds. That is an example, it seems to me, where funds should have been held up.

The ORS has never suspended payment except in the one case where they were required to do so by a Federal court in Chicago.

In any case, what are you recommending that we do? I don't think we are going to wash out all the categories or the priorities. I don't think that is the mind of the Congress.

As a result you are going to have some categories and you are going to have some fungibility problem. I see no data as to how they get around that. You say they can always transfer money from some area where there would be discrimination into say the bond indebtedness. So what is your recommendation?

Mr. LOWE. Well, Mr. Drinan, based on our studies—we have invested a lot of money in studies of revenue sharing, some of it on our own initiative, some of it at the request of various committees on the Hill, and this is required by the Revenue Sharing Act itself, that we make studies and report to Congress.

As a result of all of these studies, we have come to a valid conclusion, I believe, that the so-called restrictions or priority expenditures are an illusion. They are meaningless and the reports purporting to report what was expended under those things are also.

Mr. DRINAN. They are meaningless. I agree.

Mr. LOWE. Since they are meaningless, we propose that we recognize them as such and do away with them.

Mr. DRINAN. We can have this federal money go to towns and cities and States and it is accounted for. Frankly it is irresponsible of the Federal Government to throw \$39 billion out there in the next five years and have absolutely no way of having an accounting.

The documents we get ahead of time and then after the spending mean nothing.

Mr. LOWE. This is the second part of our recommendation and it is included in this particular report.

Mr. DRINAN. I have that right here, sir.

Mr. LOWE. We have several illustrations in there which clearly demonstrate that the statements that are now made—

Mr. DRINAN. We all agree on it but if you wipe out all the categories, all the priorities, how are you going to have any effective civil rights compliance?

Mr. LOWE. I think that is the gist of our two propositions.

Mr. DRINAN. They are not supported by the evidence and they are not persuasive to me. That is my problem. My time has expired but you can finish.

Mr. LOWE. One of the propositions is that the State of—the State or local government receiving revenue sharing funds would have to be in

civil rights compliance in all of its activities whether funded with some revenue sharing funds or not.

At that stage, the fungibility question becomes moot. If Congress is interested in having people at the local level know what is happening in their government and what their expenditures are, I think this present procedure is a mistake.

To have a public hearing on how you are going to spend revenue sharing funds, where the revenue sharing fund may constitute 5- or 10-percent of the budget, seems to me to be a waste of time. I think the citizens ought to be concerned with where 100-percent of the budget is going.

The proposition we are making here is, in effect, that this be combined in one statement so the citizens that are in a particular locality have some knowledge of what is happening with the total budget, not just the ten percent or the 12-percent or the 5-percent or so that has to do with revenue sharing.

I think that is a very valid point to make. I have seen a lot of studies of revenue sharing—where first the study recognizes that the so-called priority expenditures areas in the law and in the reports are not valid and then it adds all those up together and says but look when we add those together, there was not any money spent on social services.

What you really have to do is take the total income and the total expenditures of that particular government and see what happened to them. I don't think you can do it just with revenue sharing.

Mr. Hair has had a lot of practical experience in county and local government and I wish he would address that point just a bit.

Mr. HAIR. I don't think there is any way that you can—at least we have not discovered it and we would be happy to examine anyone's ideas on it—but I seriously question there being any way that you can get an effective determination by priority categories except if you have a list not nearly as long as the act now has.

The accounting records can clearly show—and we are not quarreling with this—the accounting records can show that the money was spent in the police department or the fire department. It is a simple designation process. But the actual direction of the funds may be something entirely different. The possibility of this misleading information is what has concerned us.

There is talk about how much money was spent in public safety and other things and we are convinced that these statements quoted and used have absolutely no validity. At least they cannot be proven to be valid. The suggestion and the presumption after examining it is heavily on the side that they are not valid.

I don't know of anyone who is now still supporting that the priority category expenditures reports have any real validity. The question that you asked, how then will we get at the civil rights question, we believe is covered by our general recommendation, that is, in order to qualify for receipt of revenue sharing funds and be subject to withholding of all or a portion of those funds, a government must be able to stand the test that it is not discriminating in any of its programs.

The same type of auditing procedures and other procedures that we use to trace these moneys in fictitious categories can be used to examine them in terms of the total operations of the government.

We think that our recommendations in this matter are practical and are workable. However, we are not unmindful of the problems of

opening up the complaint process to the entire operations of all of the local governments and State governments that receive funds under general revenue sharing.

There is little question about the fact that such a provision that we are recommending will result, I think in a large number of complaints and the general pattern of development that would probably lead to most governments having to adopt affirmative action hiring plans on the question of discrimination in employment throughout the country.

This we think is probably good but we are not unmindful that it probably needs considerable guidance by the Congress as to establishing legislative standards as to what would qualify as acceptable plans.

We have given the matter of congressional legislative guidance only a little consideration. That is mostly my own personal opinion. I don't want to indicate that as any thing coming out of audit.

I am convinced that if the Congress does agree it will also have to give some guidance as to what would be acceptable in terms of affirmative action hiring plans.

Mr. DRINAN. Thank you. I am still unpersuaded.

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. The first question deals with several things. How much money have we spent on studying revenue sharing?

Mr. LOWE. I am not sure how much the government as a whole has spent. It is a very popular subject these days for study. We have spent upwards of \$2 million I believe and I can explain why.

One of our studies when we started finding out that these reports were meaningless involved 250 local governments. That is a tremendous amount of manpower required and the cost of that job was very substantial.

You do two or three of those you are up in the \$2 million category.

Mr. BUTLER. I understand that but I would like to know. I do not want to send you off on another study.

Mr. LOWE. Yes, sir.

Mr. BUTLER. But I do want to be told then what is the status of the Boston Fire Department and what has been done.

Mr. BADILLO. If the gentleman will yield, I can answer that question.

It is in the GAO report on 26 jurisdictions. It says of the fire department case in Boston, that the NAACP filed suit alleging a practice of discrimination in the fire department against blacks and Spanish-speaking people.

The U.S. district court decided that the qualifications test was discriminatory and ordered its use stopped. It ordered that minorities and Spanish-speaking people were to be included. At the present time revenue sharing funds are being allocated to the fire department.

Mr. KINDNESS. Was the action brought under the Civil Rights Act or under the Revenue Sharing Act?

Mr. BADILLO. Revenue sharing according to this report.

Mr. BUTLER. You all have no knowledge beyond this point?

Mr. LOWE. No, sir.

Mr. BUTLER. When the Justice Department is here, we will ask them why they do not ask for the further relief. With reference to the other aspect, have you made an effort to determine how much of the revenue sharing operating fund is now going to compliance and how much of it is going to civil rights?

Mr. LOWE. We have not. We will include that in our final report.

Mr. BUTLER. I am impressed with the testimony I have heard thus far. I am somewhat critical of the civil rights enforcement of the ORS but it has reflected inventiveness. You tell us that this is the first agency entering into cooperative agreements with other agencies to exchange information which is significant.

They have cooperative agreements with State agencies in order to help compliance and this is a new area. They have also developed their own guidelines in this area which should improve compliance. Finally, they are undertaking doubling their staff in reference to the enforcement of the civil rights area.

With this background, I think that the Office of Revenue Sharing is making a sincere effort to comply with the law and if there are shortcomings, it is the fault of Congress and not the agency.

I am somewhat interested in your suggestion that the way to enforce the civil rights provisions is by a requirement that all participating localities be absolutely pure in order to receive any revenue sharing funds at all. Is it your view that the law does not presently permit the imposition of this high standard?

Mr. LOWE. I do not believe the law presently permits them to hold the local government or the State government to anything except the revenue sharing money.

Mr. BUTLER. In particular, the present law does not authorize the withholding of revenue sharing money other than from the particular function to which it is directed. The fungibility concept has to be implemented legislatively in order to carry out the suggestion you make here.

Mr. LOWE. Yes, sir; that is correct.

Mr. BUTLER. On the same line, on this report dated September 9, "An opportunity for improved public awareness of State and local government operations," I have not seen a copy of it, and that is probably my fault.

But I judge that you are reading into the Revenue Sharing Act a policy that, basically, one of the responsibilities and the functions of the act is to improve public awareness or is that the policy you are suggesting we now implement?

Mr. LOWE. I think that in the act as it is now constituted, the policy is that there will be improved public awareness insofar as revenue sharing funds are concerned. The thing that bothers us is that that is sort of meaningless. For example, in the back of this report, and I will furnish this copy to you, we have a chart showing a hypothetical government's money going in the pot at the top and out at the bottom.

We also have a typical kind of budget that we are talking about which would show for a town or a city the total resources coming into that particular government, not just revenue sharing but all of the other Federal grants which in many cases don't show up in a local government's budget. And some requirements which we are suggesting here for proper publicity and open hearings on the whole budget system—not just on revenue sharing. We think that it is rather meaningless to have a hearing on revenue sharing, saying that it is going to be used for the fire department when you really have to look at the whole picture to find out what is happening in the local government.

Mr. BUTLER. This is going beyond the legislation as it presently exists, the policy of the General Accounting Office beyond the original intent of the Congress.

Mr. LOWE. Based on our study of the law and how it is actually operating at the present time, we came to the conclusion that in these two areas, it is rather meaningless unless we make some changes.

Mr. BUTLER. I would like to say that with reference to that suggestion and with reference to your earlier suggestion about absolute purity, this is not within the purview of the function of the General Accounting Office. I am satisfied when you tell me that there is something wrong.

Until we have an opportunity to digest your report and your objection, I think it is beyond the function of the General Accounting Office to offer us policy suggestions. I am not critical of your work in this area or what you have done in terms of your research or your auditing.

But I do feel that if the Congress is abdicating its authority to you, it did that before I got here and I would like to enter my protest.

Mr. EDWARDS. Would you like to respond to that?

Mr. LOWE. I think our office stays away very studiously from recommending any kind of a new program or a new activity. But I think when we are called upon, or at least when we are required by our broad law or by specific law such as this particular one in revenue sharing to make studies, we feel it is our duty to look at the program or the activity to see what the results are.

In this case, we think that Congress certainly intended some things to happen, for example, with these priority categories.

When we find that that is not happening, we feel we have a duty to call it to Congress' attention with our own views, whatever they might be. For example, the Legislative Reorganization Act of 1970, requires GAO, on the request of a committee or at the direction of either House of the Congress or on its own initiative to review and analyze the results of Government programs.

I think this is what we are thinking about in this case. These are the results we are looking at, what we think set out to be accomplished and what is happening. That is really my view on that.

Mr. EDWARDS. Mr. Badillo?

Mr. BADILLO. Thank you, Mr. Chairman. I certainly would agree that it is impossible for the GAO to discharge its responsibilities if aside from investigating the matter we assign to them, they would not be expected to make recommendations.

That does not mean they are going to make the final decision. We will do that in Congress. But the purpose of having them prepare a report is precisely so they can make recommendations based upon the information they were able to secure in the reports.

So I would hope that you would continue to do this in this area as you have been doing in other areas. I want to go back to the Boston Fire Department situation because to me it raises a serious question about the whole procedure.

Here we have a case which has been decided already by the U.S. district court, by the U.S. court of appeals, and the matter is now pending before the U.S. Supreme Court. Both courts ruled against Boston.

Now they are still getting revenue sharing funds. At what point in these procedures is ORS to make a finding of a violation? It seems to me that once the district court rules against Boston the funds should have stopped right there.

What does the procedure provide for cutting off funds?

Mr. WILLIAMSON. It depends on whether it is in a court or an administrative hearing. It provides for cutting off funds at the end of a due process administrative hearing if there is a finding of discrimination or on a court order.

Mr. BADILLO. The district court finding—

Mr. WILLIAMSON. They certainly could have cut off the funds after the district court ruled against Boston.

Mr. BADILLO. Otherwise the jurisdiction could go on violating the law and it might take years to get to the Supreme Court. Then they have an argument that it should be cut off at the time that there is a finding of discrimination.

Mr. LOWE. That is a question I really can't answer for you. I wish you would—I suggest you take that up with the revenue sharing people.

Mr. BADILLO. I just wanted to know what the regulations now provide. In the first section of your testimony you went into the question of complaints. The complaint procedure is fine if there is an end to it, if there is some point at which the complaint is acted upon if it is found to be valid.

That is the point you did not touch upon. At what point is the complaint found to be valid and is action taken? With respect to the 1,600 audits, you mentioned there are something like 39,000 units of local government. If you have only received reports from 1,600 units, that really works out to less than 5 percent.

That is very inadequate compliance, it seems to me.

Mr. GOLDBECK. I am not sure of the exact number, Congressman. But a report has to be submitted in the case of revenue sharing only where the auditor found some problem. If he did not find a problem, the ORS audit guide says we do not want a report.

Mr. BADILLO. In the 1,600 cases there was a problem?

Mr. GOLDBECK. Many of those they sent in automatically.

Mr. BADILLO. It says ORS has received 1,600 audit reports prepared by State and local auditors and public accountants. That seems to indicate that is all that was received.

Mr. GOLDBECK. There were other audits that had been done but they did not send a copy to ORS.

Mr. BADILLO. No, you say there were 39,000 audits prepared?

Mr. GOLDBECK. No, sir. I am sure 39,000 were not prepared. I am sure it is substantially greater than the 1,600.

Mr. BADILLO. I would like to find out how many of them were prepared. If it is 1,600, that is bad.

Mr. LOWE. There is no way you can tell. The audit regulations put out by the Office of Revenue Sharing only require that an audit report be sent in if there is some reason that the auditor feels it ought to be sent in. There is no way you can tell how many were not done.

Quite a few of these 1,600 were sent in automatically without any particular reason for them to be sent in. There is no requirement in some places that audits be conducted. We would not have any way of knowing how many were not done.

Mr. EDWARDS. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman. I would like to point out that your statement indicates that a letter dated December 30, 1974, from the chairman of the House Judiciary Committee is the basis for this testimony and that the testimony is stated in response to a series of questions.

Since I do not seem to have access to that letter, will you be kind enough to provide a copy of that letter?

Mr. LOWE. Yes, sir.

[A copy of the letter follows:]

CONGRESS OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., December 30, 1974.

Mr. ELMER B. STAATS,
Comptroller General,
General Accounting Office,
Washington, D.C.

DEAR Mr. STAATS: As you know, in September 1973, the Subcommittee on Civil Rights and Constitutional Rights of the House Committee on the Judiciary held a preliminary hearing on the administration of the civil rights provisions of the Revenue Sharing Act (State and Local Fiscal Assistance Act of 1972). With the Act coming up for renewal during the 94th Congress, the Subcommittee intends to conduct comprehensive hearings into how the Office of Revenue Sharing (ORS) has discharged the civil rights enforcement responsibilities assigned to it under the Act. To assist in the Subcommittee's evaluation efforts, it would be most helpful if GAO would review and report to the Subcommittee on the activities of ORS in this area.

Specifically, the Subcommittee is seeking information on the manner in which ORS has handled civil rights complaints which have come to its attention. This would include answering such questions as:

1. How many and what kind of civil rights complaints have been received by ORS through December 31, 1974?

2. How are the complaints processed by ORS and how quickly are they investigated?

3. What disposition has been made of complaints received through December 31, 1974?

4. Are formal compliance agreements entered into with recipient jurisdictions that have been the subject of complaints?

5. What is the extent and nature of ORS' monitoring of any such agreement?

6. In how many instances have complaints been dismissed because there was a determination that revenue sharing funds have not been used in the acts complained of? Is there evidence that such dismissed complaints have been certified to other appropriate agencies for investigation?

7. What criteria has ORS followed in resolving complaints and is the criteria consistent with that applied by other Federal agencies?

8. Are complainants notified of the disposition of their grievances?

9. In those cases or matters which ORS has closed, have complainants been satisfied that the practices which formed the basis for their grievances have been or are being eliminated?

It is my understanding that a basic part of the compliance philosophy of ORS has been to encourage the assistance of civil rights organizations, public interest groups, and other Federal agencies to help insure compliance with the civil rights provisions of the Act. We would be interested in information on the extent of coordination and cooperation ORS has obtained. We are also interested in any actions the agency has taken to identify, on a systematic basis, recipient governments in which civil rights problems may exist even though no complaints have been filed against the governments. Similarly, the Subcommittee is interested in receiving some assessment of the extent to which such problems may exist without their having come to the attention of ORS.

I understand that members of the Subcommittee staff have held discussions with GAO representatives and that they have agreed that the proposed review would be complimentary to reviews of the civil rights aspects of the Revenue

Sharing Program that GAO now has in process. It was also agreed that information gathered for the Subcommittee could be used in other GAO studies of the ORS compliance system. Considering the Subcommittee's plans for hearings, I would hope that your report to the Subcommittee could be completed by July 1975. I am confident that the report will be a very useful document to the Subcommittee and the Congress during deliberations on renewal of the revenue sharing legislation.

Sincerely,

PETER W. RODINO, Jr.,
Chairman.

Mr. KINDNESS. I find that the statement that was made here earlier indicated that it is irresponsible for the Federal Government to send this money out to local governments and State governments without some greater degree of control.

I think for the sake of balance it might be pointed out that on the part of Congress it is irresponsible for the Federal Government to be draining all this tax money out of these local governmental jurisdictions in the first place. I think that is the basic thing that seems to be overlooked in regard to the general revenue sharing program, as a beginning point.

There are those who are seeking, it appears, to make revenue sharing the vehicle for extending into every State and local government a degree of complete control from the Federal level over the operations of local and State government. This is the kind of control that will properly be characterized, I think, as Federal totalitarianism. In this case it is being done under the guise of a very acceptable cause or purpose, relating to civil rights and citizen participation.

But it is just a beginning point for that kind of totalitarianism that is foreign to our system and I think the record needs a little bit of balance on that point.

I want to thank you for your statement here this morning which I think, from all I can tell without having had a copy of the letter previously, is very responsive to the inquiry requested of the GAO.

I would just like to ask with regard to the recommendation that begins on the next to the last page of your statement whether the process of requiring absolute purity, as it has been referred to here earlier, in order for a State or a local governmental unit to participate in general revenue sharing, in your opinion, can ever work?

Is not the result of a proposal like that being worked into the law destruction of the revenue sharing program?

Mr. LOWE. No, I don't think so, Mr. Kindness. I think most of the governments we are talking about—certainly not some of the smallest ones—most of the governments we are talking about already receive a large amount of Federal assistance.

As a matter of fact, about 25-percent of expenditures at the State and local level are from the Federal Government in one program or another. As we alluded in our statement earlier, nearly every one of these have some sort of requirement about civil rights. So for practical purposes a very large percentage of the governments, the recipient governments' receipts are already involved in the civil rights function.

We think it is just more sensible to apply this thing on a whole basis rather than a piece at a time.

If I could point out a report that we issued here sometime ago on the fundamental changes needed in the Federal assistance to State and local governments. In this particular report, we talked about there

being 975 programs of one kind or another with grants for State and local governments.

The fact is that this particular morass of regulations and programs is really something of a problem to State and local recipients. In this particular report one suggestion is that there should be consolidation of many similar kinds of programs.

For example, in a followup study we are doing on this thing right now, we have found that there are about 25 different types of planning grants administered by 15 different Government agencies.

Now that thing is illustrated in this report. Obviously, revenue sharing is the other side of the coin. It is a simple program and the local government can do what it wants with it.

These meaningless restrictions and categories should be done away with and since the money is fungible, the civil rights restrictions should apply to all expenditures of the local governments.

Mr. EDWARDS. Mr. Seiberling?

Mr. SEIBERLING. Thank you, Mr. Chairman. I must say I welcome the recommendations that your office has made, Mr. Lowe.

I think that you would not be doing your job if after going into this problem as deeply as you have, you did not give us the benefit of conclusions that you think your studies lead to.

Of course it is up to us to adopt them or not. I am impressed with your recommendation, too. It does seem to me that it is not effective to set priorities for revenue-sharing funds because they are too easily evaded. Therefore if we are going to set priorities, they are going to have to be for all of the funds expended, as a condition of receiving revenue sharing and that would tend to defeat the purpose of revenue sharing.

I think you have zeroed in now on two fundamental conditions, civil rights and citizen participation, which are basic and which no one can quarrel with and which do not conflict with the concept of revenue sharing. To that extent, I disagree with what Mr. Kindness has said. I don't think this is an attempt to dictate anything to local governments beyond what the Constitution itself contemplates.

Now I do have some problems about implementing some of these things. I would like to ask you first, however, if you happen to know whether among the 1,600 audit reports, did they include an audit of Akron, Ohio.

Mr. LOWE. I can look that up. I don't know.

Mr. SEIBERLING. It might be helpful in understanding how the audit reports work. Akron was involved in litigation involving discrimination in the hiring of people on the grounds of race in the police department and more significantly there were no blacks in the fire department and a lawsuit was brought and the court ordered that they admit a much larger proportion of black people for a period of time until there was balance achieved.

They are in the process of complying with that court order. I just wondered whether that is the kind of thing that illustrates how difficult it is to assure compliance. As far as I know, no revenue-sharing funds were used to finance the police department or the fire department. Therefore, no occasion would exist under the present regulations as I understand them, for an audit to be made.

Am I correct?

Mr. LOWE. Under those circumstances, there would not be any problem with the revenue-sharing program, as such.

Mr. SEIBERLING. So that could explain if there were an audit why no possible violations were noted, because there were no revenue-sharing funds involved. This seems to me to dramatize the point that you made that we ought to require compliance across the board rather than just limit it to revenue-sharing funds.

As to whether we are going to require absolute purity or something like that, I think that that is another question and that relates to the whole question of how far they have to go to show compliance in order to avoid jeopardizing their revenue sharing funds.

Have you any opinions on that or recommendations on it—on the degree?

Mr. LOWE. No we don't. It is obvious you cannot change anything instantaneously. In the studies we made of those 26 governments, there were several cases where it was quite obvious that the pattern in the past in employment had discriminated against blacks or women. But the current employment practices were being conducted under some sort of a plan to overcome that history.

Mr. SEIBERLING. I have a similar problem with respect to the other suggestion and that is that the government receiving revenue sharing should be required to provide the public with financial data and an opportunity to express their views.

As a matter of fact, the city of Akron publishes in the newspaper every year its proposed budget. I suppose the people can come to the city council chambers and express their views on the budget.

Do you have any recommendations as to the kind of opportunity the public should have to express its views?

Mr. GOLDBECK. I believe the type of opportunity we had in mind was a public hearing on the published report.

Mr. SEIBERLING. A public hearing. I think that makes a lot of sense. Thank you. My time has expired.

Mr. EDWARDS. Mr. Dodd?

Mr. DODD. Thank you, Mr. Chairman. I thank the members of the panel. I would like to get into an area that is of some concern to me and I must compliment the GAO for this. I made a request that they do a study for one on the degree of the problems arising in discrimination against the handicapped.

As you know, section 504 of the Rehabilitation Act of 1973, if it had an enforcement mechanism, could be used to combat revenue sharing discrimination against the handicapped.

The ORS did not consider revenue sharing to be Federal financial assistance. We have asked your office to comment on whether you consider Federal financial assistance to include revenue sharing.

Mr. WILLIAMSON. Mr. Dodd, it is not entirely free from doubt but our opinion is that it does include revenue sharing. The legislative history of that particular act makes no mention of revenue sharing but the legislative history of the Revenue Sharing Act leads us to believe that Congress would have intended this sort of thing to be included as Federal financial assistance.

So our opinion is that this provision does apply to the revenue sharing moneys. However, you should note that that does not mean that it amends the Revenue Sharing Act to include that as another category of discrimination.

Compliance procedures in the Revenue Sharing Act would not be available for this and section 504 has no compliance procedures of its own. Section 504 would create a private right in a handicapped person discriminated against and that is about it.

Mr. DODD. I thank you for that statement. I would like to quickly get to a couple of points, one about the lack of coordination. As I understand it, ORS entered into cooperative agreements with other Federal agencies charged with enforcement of civil rights. Title VI agencies, for example. As already stated ORS could organize a periodic review program. At present ORS seems to be slow in this regard. Do you know why and do you know of any plans to speed up this process in cooperation with these other agencies charged with those responsibilities?

Mr. GOLDBECK. I believe we have seen some evidence of them trying to speed up in the recent months. I think that would be applicable to all of their enforcement efforts. They seem to be paying more attention to complaint processing, the need to speed up.

Mr. DODD. Are they doing anything specifically that you can point out, in terms of staff, reallocation of funds?

Mr. GOLDBECK. They are doubling their staff.

That is the plan for this current fiscal year. They are also continuing to negotiate with other Federal agencies. In discussions with them, they have told us that unfortunately the negotiation process is long and there is no precedent because they are in the business for the first time.

Mr. DODD. You are satisfied that they are moving ahead in this area?

Mr. GOLDBECK. Yes. I think in recent months we have noticed changes occurring including new procedures.

Mr. DODD. Another point, the compliance agreements are often unwritten at least in formal fashion. I think all of us in Congress are aware of the mounting complaints about bureaucratic paperwork, but it would seem to me that it would be vitally important in terms of judicial review to have these agreements, to have some record rather than to have to rely on oral testimony or recall. Could you comment on that and why this has not been done and whether or not it would cause any serious problems to have a more formal record of these compliance agreements?

Mr. GOLDBECK. To my knowledge they do still not have a document signed by both parties. However, I think they are now at least sending letters to a government which would outline the steps that the ORS feels are necessary for compliance.

In return the government would send back a letter saying we will agree to that. There still is no formally signed document by each party involved.

Mr. DODD. My time has expired.

Mr. EDWARDS. Mr. Klee?

Mr. KLEE. In the interest of time, I do not intend to use my full 5 minutes. I do have one point of clarification for the record. With regard to the *Boston* case that has been referred to this morning by a number of members, to your knowledge, did you find any complaint filed with ORS to initiate administrative remedies in the *Boston* case?

Mr. GOLDBECK. You mean using a formal hearing, that process?

Mr. KLEE. Yes.

Mr. GOLDBECK. No, we did not.

Mr. KLEE. So then really the Office of Revenue Sharing is deficient in not having reviewed every single Federal district court or circuit court civil rights case to find out if there was any potential violations?

Mr. GOLDBECK. I believe there was a complaint opened up in that case but the Office of Revenue Sharing did not institute proceedings to have formal hearings.

They did have a complaint opened in that case.

Mr. KLEE. Since the legal remedy was pursued in the Department of Justice by virtue of its authority under section 122c of the act, a suit was filed in court; did it request that funds be cut off as one of the remedies in that suit?

Mr. GOLDBECK. I am not that familiar with the case.

Mr. KLEE. It certainly has that power under the act, though. Is that your understanding?

Mr. GOLDBECK. We could find that out. The Office of Revenue Sharing will be here this afternoon.

Mr. EDWARDS. I am not going to use my 5 minutes either, gentlemen. I would like to just comment on your suggestion made near the end of your statement, Mr. Lowe.

What you are saying basically is that cities and States that violate Federal law should not get a Federal handout?

Mr. LOWE. At least as far as revenue sharing is concerned. We just think it is very difficult to be just a little bit pregnant.

Mr. EDWARDS. Thank you very much, gentlemen.

Mr. Seiberling?

Mr. SEIBERLING. Mr. Lowe, according to the Justice Department, one of the reasons for not broadening the act's nondiscrimination provisions to cover all of the recipient's activities is that there has not been any substantial evidence that jurisdictions have been purposely funneling shared revenues into nondiscriminatory programs.

What is your opinion with regard to the adequacy of that attempted justification?

Mr. LOWE. That statement may or may not be true. I am not sure it really has any significance. I don't think we ever implied in our studies of this thing that all of the local governments and the State governments receiving revenue sharing were deliberately channeling it one way or another.

Early on they tended to channel their revenue sharing funds to capital programs rather than getting those funds involved in some of their ongoing programs for fear that revenue sharing might one day be stopped and they would be stuck with some programs.

I think that has eased off a little bit. I don't really think that the substance of that statement really has any significance on the problem.

Mr. SEIBERLING. Your position as I understand it is that you can't really tell whether revenue sharing is helping encourage compliance with antidiscrimination laws unless you have the whole picture covered rather than simply just those particular funds traced in a particular program?

Mr. LOWE. That is correct. In this report we have here that we issued previously on the reporting requirements, we use an example on page 9 of the report of an organization that in 1974 spent \$729,000 of its own funds for a police department.

In the following year they spent \$400,000 of their own funds and \$420,000 in their revenue sharing but there was no change in their department. In a report that came into the Office of Revenue Sharing that we sent to Congress, it showed that that money was spent for the Cheyenne Police Department. Actually it had no effect at all on the increase or decrease in police department funds.

Mr. BUTLER. The Cheyenne Police Department, if that is what we are talking about, is this a use of the funds to discriminate?

Mr. LOWE. No, sir; this is in our report just illustrating the fact that the planned use reports and the actual use reports do not give you any indication of what the impact of revenue sharing funds was.

In other words, you might look at that and say it is—it must have increased their expenditures \$400,000, but that is not true. They just funded it partially with revenue sharing funds that year.

Mr. EDWARDS. Thank you, Mr. Lowe, and gentlemen.

Our next witness this morning has been a long time friend of the subcommittee's, Harold Himmelman, who is now associated with the law firm of Ruckelshaus, Beveridge, Fairbanks, and Diamond. Mr. Himmelman was formerly Director of the Revenue Sharing Project of the Lawyers' Committee for Civil Rights Under Law, and he is testifying this morning on behalf of the Lawyers' Committee.

**TESTIMONY OF HAROLD HIMMELMAN, COOPERATING ATTORNEY,
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, ACCOMPANIED BY ABIGAIL TURNER, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW REVENUE SHARING PROJECT**

Mr. HIMMELMAN. Mr. Chairman and members of the committee, I appreciate the invitation of the House Judiciary Committee on Civil and Constitutional Rights to testify on the status of civil rights enforcement under the State and Local Fiscal Assistance Act of 1972, commonly known as the Revenue Sharing Act.

I practice law in Washington, D.C., and am a cooperating attorney with the Lawyers' Committee for Civil Rights Under Law, a non-profit organization formed at the request of President John F. Kennedy in 1963 as a means to involve the private bar in the protection of basic civil rights.

The Lawyers' Committee engages in considerable litigation against discrimination in such areas as education, employment and the provision of municipal services and revenue sharing.

I am the former director of the committee's revenue sharing project, and I continue to be involved in an advisory capacity in several enforcement actions designed to prevent revenue sharing from causing or perpetuating racial discrimination.

Seated with me is Abigail Turner who is now a staff member with the revenue sharing project.

As you know the Treasury Department's Office of Revenue Sharing (ORS) is responsible for administering the State and Local Fiscal Assistance Act and for enforcing the nondiscrimination requirements in section 122. I will use the Lawyers' Committee experience in filing complaints of discrimination with ORS—and litigating those cases through its administrative compliance mechanism and the courts—to

illustrate what we view as major deficiencies in the agency's civil rights enforcement program.

Before doing so I want to mention that two cases I will discuss—Ouachita Parish and Chicago—are still in varying stages of litigation. As a result my remarks will be confined to matters that are already part of the public record. Moreover it should be understood that some of what I say has been contested by either local or Federal officials.

OUACHITA PARISH, LA.

Black citizens of Ouachita Parish, La., represented by the Lawyers' Committee, filed an administrative complaint with the Office of Revenue Sharing in April 1974. The complaint charged that the parish's expenditure of revenue sharing funds was perpetuating racial discrimination in street and drainage ditch construction and maintenance, parishwide employment, fire protection, and library and recreation programs. Plaintiffs also alleged sex discrimination in the recreation program.

I have seen firsthand the conditions in Ouachita Parish, a county with approximately 125,000 residents. And I am shocked. The blacks living in Ouachita Parish, unlike their white counterparts, often reside and travel on streets which are unpaved and potholed.

Their homes and adjacent property are flooded because of poorly maintained or nonexistent drainage ditches. Some have used rowboats to get to and from their homes. Residents believe fire damage to their homes is sometimes unnecessarily severe because fire department personnel do not know the location of streets in black neighborhoods.

Opportunities for an improved economic status are denied them because of the parish's discriminatory public employment policies. The services of the G. B. Cooley Hospital for Retarded Children for a long time were denied to black families.

Materials about black people in public libraries are inadequate. And in all of these areas the local government annually spends \$650,000 in revenue sharing, which primarily benefits the white community.

Following an onsite investigation in June 1974, the Office of Revenue Sharing confirmed many of our charges and specifically notified the parish government in August 1974 that it was out of compliance in employment in all parish departments receiving revenue sharing funds, in construction and maintenance of streets, and drainage ditches, and in matters of assuring nondiscrimination by contractors working on projects funded by revenue sharing funds.

ORS further notified the parish that it had 60 days to come into compliance with the nondiscrimination requirements of the State and Local Fiscal Assistance Act and asked for affirmative action plans to remedy the discrimination. Inexplicably the ORS refused to investigate adequately certain of our other charges.

Sixty days after the issuance of the noncompliance letter the parish filed a routine denial of the charges of discrimination and submitted no affirmative action plans as requested. Yet the ORS, despite the clear requirements of the law, neither instituted administrative termination hearings nor referred the matter to the Attorney General for appropriate civil action. ORS continued sending revenue sharing payments to the parish.

Because of this inadequate action, the black citizens filed suit against the ORS in Federal court in Washington in April 1975. They charged that the ORS failed to investigate adequately their charges of discrimination and that the agency had failed to insist upon adequate remedies for the discrimination it had found.

They further asserted that a pattern of discriminatory provision of basic services continued unabated in Ouachita Parish with the aid of revenue sharing.

Incredibly the ORS responded by suddenly finding the parish in compliance with the nondiscrimination requirements of the act on the basis of legally insufficient general pledges from parish officials to do better. ORS required no written affirmative action plans spelling out specific steps for overcoming discrimination. The parish's promises and ORS' acceptance of them fail to comply with standards established by the Federal courts and other Federal civil rights enforcement agencies.

Although on June 27, Judge John Pratt of the U.S. District Court for the District of Columbia denied the plaintiff's motion for emergency relief, he said the case warranted a hearing on the merits. The parties are now preparing for a trial.

Black citizens in Ouachita Parish who have historically been denied equal municipal services at the least have had their rights to equal benefits from revenue sharing unduly delayed because of the posture taken in the case by the Office of Revenue Sharing.

CHICAGO LITIGATION

In September 1973 the Lawyers' Committee, along with the Center for National Policy Review and the law firm of Kirkland, Ellis & Rowe, represented black police officers in Chicago in filing an administrative hearing complaint with the Office of Revenue Sharing. The complaint charged that the police department was spending nearly \$70 million of revenue sharing annually to support discriminatory employment practices.

These charges were based on an extensive Law Enforcement Assistance Administration report, a Justice Department suit against the Chicago Police Department which had been filed in Illinois Federal Court in August 1973, as well as private suits brought by minority police officers.

The administrative complaint asked for an ORS investigation of the allegations and temporary suspension of revenue sharing moneys that were going to the police department.

The ORS investigated our complaint and agreed there was discrimination in the Chicago Police Department. Yet it refused to suspend the funds to Chicago or to take any other enforcement steps. As a result, we filed suit against the Office of Revenue Sharing in Washington, D.C., in February 1974.

The suit charged ORS with dereliction of its statutory duty to insure that revenue sharing funds are spent in a nondiscriminatory manner and sought a court order requiring ORS to suspend temporarily further payments.

The Federal District Court in the District of Columbia in the first ruling of its kind issued a judgment in April 1974 that the Office

of Revenue Sharing had acted improperly by not activating its administrative compliance procedures.

The court further ruled that ORS possessed authority to suspend temporarily the payment of revenue sharing funds to governments which it found to be discriminating.

ORS responded to this order by referring the case to the Justice Department and attempting to wash its hands of the matter. Millions of dollars of revenue sharing moneys continued to pour out of the Treasury Department's coffers to support Chicago's discriminatory employment practices.

Finally in November 1974, after more than a year of litigation, the Federal court in Illinois made a formal ruling that race and sex discrimination pervaded the Chicago Police Department.

But still ORS failed to take action and still it planned to forward payments. As a result the Washington court in December 1974 finally ordered ORS to cut off revenue sharing funds to Chicago. Since that date and because of its refusal to take appropriate corrective action, Chicago has received no further payments.

In April 1975 after a consolidation of the Washington and Illinois cases, the court confirmed that Chicago's revenue sharing funds must be withheld until the city remedies its discriminatory employment practices.

It emphasized that Federal agencies, including ORS must exercise affirmative duties to police compliance and prevent constitutionally and statutorily proscribed discrimination.

A final order in the case is expected soon.

ORS's refusal to take action against Chicago and to defer the city's funds from the time it was originally requested to do so in 1973 through December 1974 meant that Federal moneys in the amount of \$135 million supported discriminatory employment practices in Chicago.

Obviously this enforcement policy provided little incentive to the city to cease its unlawful practices.

BOSTON

ORS's extreme delays in investigating complaints and pursuing administrative remedies are further exemplified by our Boston case. On January 17, 1975 the Lawyers' Committee along with its Boston committee, filed an administrative complaint with the ORS charging that the Boston Public Works Department was engaging in employment discrimination funded by revenue sharing.

The Treasury Department to date has not even investigated the charges of discrimination. Such inaction is in violation of the revenue-sharing regulations which call for a prompt investigation of complaints.

Mr. KINDNESS. When you say the Treasury Department do you mean ORS?

Mr. HIMMELMAN. Yes.

Mr. KINDNESS. In referring to the Boston case, you are referring to the public works department and not the fire department?

Mr. HIMMELMAN. Yes, I am.

MONTCLAIR, N.J.

The Montclair case further illustrates ORS's timidity in vigorously enforcing the act. The Lawyers' Committee in July 1974 representing Operation PUSH and the Montclair branch of the NAACP, filed an administrative complaint with ORS concerning the discriminatory expenditure of revenue-sharing moneys by Montclair's police and fire departments.

The basis for the complaint was a finding by the New Jersey Division on Civil Rights, Department of Community Affairs on June 19, 1975 that the town of Montclair was in violation of State laws against discrimination in hiring and promotion within the police and fire departments. The division required Montclair to take specific steps to remedy the discrimination and prescribed certain judicially sanctioned goals and timetables.

In August 1974 ORS notified the town that it was not in compliance with the act and gave the town the 60 days provided in the regulations to submit an adequate affirmative action plan.

But in October during negotiations with the city, ORS capitulated and accepted as adequate the city's general pledges which were far from meeting these requirements.

Many of the requirements imposed upon Montclair by the State were ignored by ORS. The State case is now before the New Jersey Supreme Court on the issue of specific hiring and promotion goals.

ORS's posture in this case in addition to weakening Federal enforcement efforts completely undercut the position taken by the courageous State civil rights agency.

BUFFALO, N.Y.

ORS's refusal to pursue its independent administrative responsibilities is shown in the Buffalo case. In response to an administrative complaint filed against Buffalo charging discrimination in the police and fire departments. ORS declined to act, arguing that a pending Justice Department suit against the same departments precluded it from taking independent administrative action.

Nothing in the law prevents ORS from acting simply because Justice is involved; and of course, only ORS has the power to withhold funds. Yet the agency evades its responsibilities and permits revenue sharing funds to continue to flow to a jurisdiction charged with discrimination by the U.S. Government as well as private parties.

SUMMARY

This sad litany of agency inaction and impotency results in American citizens being victimized by the discriminatory expenditure of revenue-sharing moneys.

In our view the ORS compliance efforts are distinguished not by their effectiveness but by long delays and legally inadequate negotiated settlements. The agency's efforts reflect its philosophy that its role is to send money under any and all circumstances, that it is in a service rather than a supervisory role vis-a-vis 38,000 recipient governments.

This philosophy, while acceptable in certain circumstances, is devastating when applied to civil rights obligations in a \$6 billion program.

RECOMMENDATIONS

Our experience shows that a person suffering from discrimination funded by revenue sharing cannot obtain timely redress through the Treasury Department's existing administrative procedures. While some believe that the only remedy is to alter drastically the current statutory enforcement mechanism—such as by transferring all enforcement authority over revenue sharing out of the Treasury Department and over to the Justice Department—the Lawyers Committee at this time offers the following suggestions at a minimum for changing the current pattern:

1. The Treasury Department adheres so tenaciously to the no-strings-attached philosophy of the new federalism that it ignores the act's specific promise of equal treatment under the law.

Thus a new clear congressional mandate to Treasury is called for in which the Congress reasserts its role of defining the antidiscrimination obligations of the executive agency. The Congress, for example, should clarify ORS's jurisdiction to act regardless of what another Federal agency does.

2. To end the interminable delays in ORS compliance actions we recommend that the act be amended to include specific time limitations between steps in the administrative compliance process.

For example, the Secretary should not be allowed to delay indefinitely the scheduling of an investigation or the determination of non-compliance. And once noncompliance has been determined, the Secretary should be required to notify the recipient jurisdiction within 10 days and allow the jurisdiction 60 days to achieve voluntary compliance.

After that 60-day period expires, the Secretary should within 10 days immediately begin administrative hearings leading to termination of funds, or refer the matter to the Attorney General for action. Continuing attempts at reaching a negotiated settlement for months on end results in weak agreements and dilutes public confidence in the Government's commitment to equal opportunity.

It is an open invitation to noncomplying jurisdictions to continue their unlawful practices with impunity.

3. Pursuant to existing judicial rulings an amendment must be enacted to direct Treasury to suspend revenue sharing funds to a jurisdiction pending the outcome of final administrative or judicial proceedings. This should apply in each case where: (a) Prima facie evidence of discrimination has been shown through a complaint filed with ORS or another Federal agency or through a suit filed with a Federal or State court, and (b) the ORS has confirmed the discrimination.

Mr. DRINAN. On that point could they appeal to the U.S. Supreme Court? Is that final judicial proceedings?

Mr. HIMMELMAN. As soon as an administrative agency proceeding or a district court hearing results in a finding of discrimination, the funds should be terminated.

If the district court finds that a recipient government is not in compliance with the Revenue Sharing Act, funds would be suspended.

If the appeal resulted in an affirmative of the discrimination finding, the funds would remain suspended. If the court of appeals reversed the finding of discrimination the funds could be released back to the jurisdiction.

This policy has long been followed with success by HEW and approved by the courts and the courts have now approved the policy for ORS. It takes on added importance in view of the ORS's long delays in handling complaints. Without a suspension of funds, revenue sharing will continue to support discriminatory conduct and finance inequities that have a devastating effect on their victims.

4. ORS should be required to compel specific written compliance agreements from governments found by that agency, the courts, or another agency to be discriminating before revenue sharing funds are made available to the jurisdiction.

These agreements should follow EEOC, Labor Department, HEW and other judicially sanctioned remedial plans.

Without such agreement ORS claims of having successfully resolved many of the more than 100 civil rights claims it has received are pointless and incapable of verification.

CONCLUSION

Our 2-year experience with litigating against discrimination in the general revenue sharing program and with observing the impact of that program upon the Nation's commitment to equal opportunity for all Americans, raises fundamental troubling questions.

Congress must take a hard look at whether this massive no-strings program at least as it affects our less advantaged citizens, has served our society well or not. If not, changes must be made and they must be made now.

Mr. EDWARDS. Thank you, Mr. Himmelman.

Can you and Ms. Turner return at 1:30 for brief questions?

Mr. HIMMELMAN. Yes, we can, sir.

Mr. EDWARDS. In that event, we will recess until 1:30 this afternoon.

[Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 1:30 p.m.]

AFTER RECESS

[The subcommittee reconvened at 1:40 p.m., Hon. Don Edwards, chairman of the subcommittee, presiding.]

Mr. EDWARDS. The subcommittee will come to order. Mr. Himmelman has completed his statement. I recognize the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman. I commend Mr. Himmelman and Ms. Turner on the work that they have done. Coming to the bottom line first, what would you recommend as a way by which the new bill could rectify some or all of the abuses that you have outlined here so forcefully?

Mr. HIMMELMAN. Congressman, there are two alternatives it seems to us at this stage. The first alternative is to retain all jurisdiction over civil rights enforcement in the Office of Revenue Sharing but to write into the law more specific requirements for the Office to follow in its future activities.

The second alternative, and one that I personally favor at this time, is to take all responsibility for civil rights enforcement that is now in the Office of Revenue Sharing and place it in the hands of the Justice Department.

As we understand section 122 of the present law and as it has been interpreted by the courts, the Revenue Sharing Act as written is really ample to accomplish the goals of civil rights enforcement in an Administration or in an agency that is truly committed to civil rights enforcement and more importantly perhaps even than the commitment, understands how to do it.

So while we talk about reforming the law and making it more specific, we should point out that the present requirements are relatively sufficient to meet many of the goals we seek now in our litigation or administrative proceedings.

But we are forced to the conclusion after spending the last 2 years attempting to litigate our way through these problems that without a clearer congressional definition, we are not going to have the kind of enforcement that is required.

My personal view is that there is little room for hope that substantially revising the present law is going to result in stronger and more effective enforcement. I base that on the fact that the Office of Revenue Sharing has repeatedly been told by at least two courts what its authority is, and I am speaking of this Chicago case, and despite being advised repeatedly by the courts of its obligations, it continues to read the law contrary to the opinions of two courts.

I don't think we should have to go through 2 more years of litigation.

Mr. DRINAN. If this were transferred to the Justice Department, would that make ORS unique as a Federal agency?

Mr. HIMMELMAN. It would be a novel proposal. The current legal framework is that in the transfer of Federal funds to State or local governments, the administering agency retains responsibility for insuring that funds are used in a non-discriminatory fashion.

There are independent agencies which monitor State and local governments such as the EEOC, but the current law provides that the Department of Labor, HEW, HUD or other agencies themselves must monitor the transfer of their funds to State and local governments.

This proposal would be a novel proposal and it is based on our feeling that the central mandate of the Treasury Department is nonprogrammatic in the sense that it is not an agency which deals with several Federal programs of financial assistance; it does not have a civil rights office or programs for the poor or for the otherwise disadvantaged as do HEW, Labor, and HUD.

So while it would be a novel approach we think there is some justification for considering it at least in this context.

Mr. DRINAN. In a sense, it would be the Congress giving up, because of the lawlessness of the people in the Office of Revenue Sharing saying: We have to transfer this somewhere else because these people won't follow the law.

Mr. HIMMELMAN. A transfer would be based on that conclusion.

Mr. DRINAN. Do you think there is any hope in the regulations proposed by ORS?

Mr. HIMMELMAN. No. The regulations proposed by the ORS do nothing more—and I have studied them carefully particularly in light

of the litigation we have—those proposals do nothing more than attempt to implement their view of their administrative authority. Those proposed regulations do not provide for deferral, for example, pending administrative hearings as the courts have said they could do.

So while they have attempted to come in with some proposed regulations, no one should be fooled that these represent a toughened enforcement position on their part.

Mr. DRINAN. Thank you. My time has expired. I hope there subsequently may be some more.

Mr. EDWARDS. Your statement was excellent and much appreciated. Did you hear the General Accounting Office recommendation which is generally that funds should be cut off if any jurisdiction is guilty of discrimination in any of its activities?

Mr. HIMMELMAN. I am aware of that. I heard parts of their testimony and that view is shared widely by most of the groups that have looked carefully at civil rights enforcement under the revenue sharing program. That would also be a somewhat novel proposal. Generally Federal funds have been cut off by courts, for example, only in programs where discrimination is found.

There is frankly little precedent for terminating funds or temporarily suspending funds in a nonprogrammatic area. There are some cases on that point.

However, revenue sharing is a very novel program and there is nothing which prevents the Congress from considering an umbrella provision requiring recipients to be in compliance with civil rights requirements in all their activities.

It is my view that that would be appropriate in these circumstances. We are past the day, it seems to me, when we should have technical distinctions between when a government can discriminate and when it can't. The Constitution and Federal law are clear that State and local governments, as the Federal Government, cannot discriminate in any of their practices.

If revenue sharing is being used as a subterfuge to avoid certain problems and to permit discrimination to continue, I think it would be appropriate to take a look at a government's total activity and if discrimination is found to determine that that is sufficient to justify a cessation of these Federal payments.

Otherwise, the revenue sharing program acts as an incentive for governments to be recalcitrant in the face of Justice Department litigation or other enforcement activity. Until you go to the fund remedy and threaten the cutoff of funds, you are not hitting anybody where it hurts.

Mr. EDWARDS. We suggested something like that to then Secretary of HUD, Romney, and suggested that they not allow FHA and VA guaranteed loans in cities that discriminate in housing. He said he would be against it. He said that there are many thousands of cities who would just say, "well, we don't want the FHA loans anyway; we will get by with other financing." Do you think that would happen in revenue sharing?

Mr. HIMMELMAN. I think that would happen, if at all, Mr. Chairman, only in jurisdictions where the amount of revenue sharing is a drop in the bucket. I cannot believe, for example, that Chicago, which has been subjected to litigation which has stopped their revenue

sharing funds, would say "we don't want \$75 million a year." When our lawsuit stopped the payment of funds, Chicago said its government would be placed on the brink of financial collapse. I cannot believe that Boston, which receives \$9 or \$10 million a year, would turn its back on that assistance.

I don't think these governments would take the position "we don't want revenue sharing." If they did, then we could make those funds available to governments where there is not discrimination.

Mr. EDWARDS. Thank you, Mr. Klee?

Mr. KLEE. Thank you, Mr. Chairman. That remedy certainly is unique and I am not sure that depriving governments of funds where there is discrimination and giving it to those where there is not goes toward curing the problem of discrimination.

It seems to me the position you are advocating takes the approach of using an elephant gun—an antitank gun to kill a flea. Let us consider a hypothetical. Take the sanitation department of New York City.

If a white citizen feels that whites are underemployed in the sanitation department and that condition is due to discrimination, I take it he could bring an action under section 122, is that correct?

Mr. HIMMELMAN. That is correct.

Mr. KLEE. If discrimination was found and the city refused to initiate an affirmative action program, all revenue sharing funds to New York City should be cut off?

Mr. HIMMELMAN. The question I was asked was whether the law should be amended to provide that that remedy be available. I want to first say that I disagree with your characterization of this problem when you talk about using an elephant gun to shoot a flea.

Perhaps you regard some of these problems as being of the same order as a flea. We regard them as much more substantial than that so we think it is necessary to look at what kind of remedy is going to be effective.

You are trying to inject in this dialog this question of reverse discrimination.

Mr. KLEE. You are saying one isolated case of discrimination can serve as the basis for cutting off funds of an entire revenue sharing program to an entire city of people, innocent people in innocent programs that have not been discriminating.

Mr. HIMMELMAN. We have not advocated that position in the courts in the cases we have brought to date. We have sought to terminate funds in the programs where there has been discrimination.

The question has been posed whether we should consider an additional remedy where that is necessary because a government is in effect shifting funds from one category to another to avoid civil rights obligations.

All I am suggesting is that that is an issue that the Congress ought to look at. If we take the Chicago case, the city received \$75 million of funds per year and put three-quarters of it into the police department. We have no hesitancy recommending that all of its revenue sharing funds be suspended until that discrimination is corrected.

Mr. KLEE. I am glad you mentioned that case. I will not be able to deal with every point, but it does seem to me that you have somewhat selectively presented the facts. Is it not true in the Chicago case that

twice in the District Court of the District of Columbia, a request was made to order deferral of funds and that court would not grant such a remedy until there had been an actual finding of discrimination on the record?

Mr. HIMMELMAN. The court said that the Office of Revenue Sharing had authority as a matter of administrative discretion to temporarily suspend funds. It only ordered the Office of Revenue Sharing to do so after there was a finding of actual discrimination after a hearing.

The reason that the Court ordered the cessation of funds was because even after a court had ruled, based upon a 10-day hearing, that there was discrimination, the ORS still took the position that it could not and would not terminate funds.

Mr. KLEE. The Court in its equitable powers had the authority to order deferral of funds but chose not to do so. On the second point, the Office of Revenue Sharing looked at its statute, which nowhere contains the word "deferral," and decided that it was not legal for it to defer funds; it waited for a court to decide that.

Mr. HIMMELMAN. Title VI is incorporated in the Federal Revenue Sharing Act.

Mr. KLEE. Where in title VI does it contain the word "deferral"?

Mr. HIMMELMAN. Section 605. The Congress has recognized the right of a Federal agency to exercise a deferral policy. In that instance it specifically discussed the deferral and it put a time limit on how long that deferral could go on. There is not a law enforcement officer in the Federal bureaucracy who understands title VI who does not know that there is a deferral authority in that law.

It is the Office of Revenue Sharing's position that it is not even a title VI program. That is the argument it has used repeatedly to avoid its responsibilities to follow the dictates of the title VI laws and regulations.

If you will also review the Justice Department's regulations, which have the force and effect of law, they do provide for deferral under certain circumstances.

Mr. KLEE. I would like to broach the subject of reverse discrimination and your notion of what discrimination is. You mentioned in your statement that the failure to include materials about black people in public libraries is evidence of discrimination. I take it that you find something under the Constitution or the statute that such an omission is denying some rights to some people?

Mr. HIMMELMAN. If library services are supported by Federal funds then a citizen within the jurisdiction is supposed to have an equal opportunity in the receipt and use of those funds. In Ouachita Parish, La., library services—including an outreach bookmobile program—have not been made equally available to all citizens.

Mr. KLEE. The books in the library are available. I do want to thank you for candidly stating that what you say has been contested by local and Federal officials.

Ms. McNAIR. The first question I have relates to statutory interpretation. In describing the administration's proposed revenue sharing extension bill, the Treasury Department has said that the language of the bill is added to section 122 in order to clarify the Secretary's power to require repayment and to withhold all of the future entitlement payments.

The suggestion is that although those actions are currently authorized under the ORS' current regulations, those regulations may exceed the authority granted under the statute.

In your opinion, does the Secretary already have those powers under the statute?

Mr. HIMMELMAN. In my opinion absolutely. The current section 122, the withholding provisions of 123, and the incorporation of the title VI remedy combined with the existing ORS regulations gives ORS ample authority to withhold payments in the future based on findings of discrimination.

Ms. McNAIR. Now with respect to the *Montclair, New Jersey*, case, you indicated that the complaint was based on a finding of the State human relations department?

Mr. HIMMELMAN. That is correct.

Ms. McNAIR. But that ORS refused to pursue in the complaint filed with it all of the requirements which the State department has imposed. Do you have an opinion as to why ORS refused to vigorously pursue all of what the State agency ordered in terms of relief?

Mr. HIMMELMAN. The Office of Revenue Sharing is more concerned, in my opinion, about negotiating settlements with recipient governments that it considers to be part of its constituency than about insuring civil rights enforcement which may make these governments angry or which may deny them funds.

We have had on the record the exchange of correspondence that went back and forth between the Office of Revenue Sharing and Montclair. There were about a dozen remedial steps that the State of New Jersey imposed upon Montclair. The Office of Revenue Sharing in its final agreement with Montclair did not agree to eight or nine of those steps, many of them significant ones.

I can only conclude that the reason that the determination was made by the Office of Revenue Sharing to close the case was it would rather not haggle with the local government over what ORS considers to be "fine points."

I should mention, because it is in your record, that apparently the Justice Department also looked at the Montclair situation and suggested to the Office of Revenue Sharing that Montclair was in compliance and suggested to the Office of Revenue Sharing that they simply monitor Montclair's future activity. Well, even if we assume that that is true, what is of special significance is that there is no provision in the ORS agreement with Montclair for periodic specific compliance reports which will delineate new hires, job categories and minority employment, and so on.

Even if the Office insists it is monitoring, it has never required Montclair to provide the kind of information which makes monitoring meaningful.

Ms. McNAIR. One of the things you recommend is that ORS begin to enter into formal single document compliance agreements as most other agencies do rather than engage in a series of correspondence which they allude to as their compliance agreement.

Now I take it that by engaging in this process that leads to difficulties in terms of interpreting what a recipient jurisdiction has actually assured that it will do. Is that a problem?

Mr. HIMMELMAN. There is no question about it. I have and will make available to this committee the basic exchange of correspondence

in this *Montclair* case. The agreement which the Office of Revenue Sharing refers to in Montclair consists of a series of lengthy and detailed letter over approximately 9 months.

There has never been a consent agreement written between the Office of Revenue Sharing and Montclair. Indeed I would be willing to bet that there is not a single consent decree in any of the files of the Office of Revenue Sharing with any of the jurisdictions with whom it has supposedly reached agreements.

This policy of the Office of Revenue Sharing is in sharp distinction with every other major Federal agency, whether you talk about EPA, the Justice Department, HEW, or any other agency in the Government which reaches settlements.

There is supposed to be an agreement. It is signed by the parties. It is in the file, and it is enforceable. The Office of Revenue Sharing refuses to follow this same common sense approach in settling civil rights complaints. So it is impossible for any sensible person to even advise you whether any of the resolutions of their 40 or 50 cases which they speak about mean anything at all.

There is no agreement. There is nothing you can monitor and there is nothing you can really understand unless you interpret month after month of general correspondence and try to figure out if all points have been covered.

I know from the *Montclair* case that there are at least seven or eight major provisions of the State of New Jersey order which were never even discussed between ORS and Montclair prior to the supposed settlement.

[The Montclair, N.J., document follows:]

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, D.C., November 12, 1974.

MR. HAROLD HIMMELMAN,
Lawyers' Committee for Civil Rights Under Law,
Washington, D.C.

DEAR MR. HIMMELMAN: The attached letter to Mayor Bonastia officially closes our investigation of the use of revenue sharing funds by the City of Montclair.

Thank you for your interest and assistance.

Sincerely yours,

GRAHAM W. WATT,
Director, Office of Revenue Sharing.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW,
Washington, D.C., December 3, 1974.

Re Montclair, N.J.

MR. GRAHAM WATT,
Director, Office of Revenue Sharing, U.S. Department of the Treasury, Washington, D.C.

DEAR MR. WATT: I am in receipt of your letter of November 12 advising me that you have officially closed your investigation into the use of revenue sharing by the City of Montclair, New Jersey. This letter is to register formally the protest of my clients, Operation PUSH and the Montclair NAACP, to your decision.

As you know, in June of this year the State of New Jersey's Division on Civil Rights, after a full due process evidentiary hearing, made extensive and uncontroverted findings of racial discrimination, past and present, by the Town of Montclair in hiring and promotions in its Police and Fire Departments. In framing specific relief for the victims of that discrimination, the State adopted well-established legal standards which included cessation of the use of unvalidated examinations, abandonment of the use of ill-defined interview proce-

dures, and the establishment of goals and timetables for the actual hiring and promotion of minorities. As our briefs to you have shown, the affirmative action requirements imposed upon Montclair by the State have the full sanction of the federal courts and of other departments of the federal government, including the Justice Department and the Equal Employment Opportunity Commission.

On July 14, 1974, my clients filed a formal complaint with your office on the basis of the State's findings, and charged that Montclair's revenue sharing payments were supporting discrimination in the Police and Fire Departments. As a result of that complaint, you notified Montclair in August, 1974, that you had confirmed the City had in fact been allocating substantial amounts of revenue sharing to the discriminating departments and it was, accordingly, in noncompliance with the civil rights requirements of Section 122 of the Revenue Sharing Act.

The principal concern of your office in seeking voluntary compliance under the Act has been the adequacy of the examinations utilized by Montclair for hiring and promotion in the two departments. However, aside from brief mention in your September 16 letter to the Mayor of Montclair of goals and timetables for the actual hiring and promotion of minorities, you failed to require the Town to meet the provisions of the State of New Jersey's order, contained in paragraphs 6 and 11, which explicitly mandated that Montclair set specific goals and timetables to remedy the pervasive effects of past discrimination. Since these State requirements are the heart of equal employment enforcement, your decision on this aspect of the case is inadequate, measured by standards set by federal courts, the Department of Justice and the EEOC. In addition, you have imposed no formal requirements with respect to other aspects of the State's order, such as abandonment of existing interview procedures. Finally, you have continuously failed to defer the payment of funds to Montclair throughout this period even though the Town has repeatedly refused to comply with key aspects of the State's order and still refuses to do so.

For these reasons we regard your closing of this case at this point as unreasonable. The result specifically is failure adequately to correct Montclair's racially discriminatory practices and generally to undermine hard-won remedies which have helped reform illegal employment practices.

For a number of reasons, my clients have tentatively determined not to challenge your actions in this case through the courts. Rather, they wish to respond to the continuing requests of the Senate Subcommittee on Intergovernmental Relations and other Congressional officials to be brought up-to-date on the status of this matter. Accordingly, I will shortly make available to that Subcommittee and others the full record. At that time I will be compelled to advise those who have asked for our views of the inadequacy of your enforcement efforts.

Very truly yours,

HAROLD HIMMELMAN.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW,
Washington, D.C., December 17, 1974.

Hon. EDMUND S. MUSKIE,
U.S. Senate, Old Senate Office Building,
Washington, D.C.

DEAR SENATOR: As you will recall when I testified before your Subcommittee on Intergovernmental Relations in June, you asked to be kept apprised of significant developments in cases this office is handling involving discrimination in the general revenue sharing program. In response, I am enclosing documents in three important cases. Although I have chosen to report developments only in these cases, I shall bring to your attention at the appropriate time other information—particularly involving Ouachita Parish, Louisiana—which is deeply troubling.

I. MONTCLAIR, N.J.

We represent Operation PUSH and the NAACP in a revenue sharing complaint against Montclair. Briefly, Montclair was adjudicated by a duly-authorized New Jersey State agency (the State Division on Civil Rights), after a full due process hearing, to be guilty of widespread racial discrimination in its Police and Fire Departments. Both receive federal revenue sharing money. The State ordered Montclair to undertake a number of specific remedial steps, all of which have the full sanction of federal courts and administrative agencies. Soon thereafter my clients filed their formal administrative complaint charging Montclair with a violation of the Revenue Sharing Act. In response, ORS found Montclair to be in noncompliance and relied upon the State's hearings and decision.

Despite the determinations by the State and ORS, the record shows that Montclair has only agreed to comply with parts of the State's order while refusing to comply with other crucial aspects. For example, the Town will not agree to set specific goals and timetables for hiring and promotions in order to correct the pervasive effects of past discrimination. It made no concrete agreement to correct discrimination in the Fire Department. In fact, at the present time Montclair is attacking the State's order in an appeal to the New Jersey courts. Nonetheless, ORS has accepted what is at best partial compliance, has closed its investigation into this case and continues to forward full revenue sharing payments to Montclair. My enclosed December 3, 1974, letter to ORS Director Graham Watt and the accompanying record provide a more detailed summary of this matter.

In short, ORS undermines State and federal enforcement efforts and fails to keep faith with its own responsibilities when it accepts as satisfactory vague, general promises of partial remedial action which permit a recipient to escape not only federal but State sanctions. In spite of his statement to your Subcommittee in June of this year, that ORS has full authority to hold up revenue sharing payments temporarily to recalcitrant governments who have been adjudicated to be discriminating, Director Watt has continued to fund Montclair fully. See Testimony of Graham Watt, Hearings Before the Subcommittee on Intergovernmental Relations, Revenue Sharing, 93rd Cong., 2nd Sess., Part 1, June 4, 1974. (Of course, we have repeatedly taken the position, supported by the federal courts, that ORS has authority to hold up revenue sharing even before hearings are actually held, so long as they are promptly scheduled.) The net result of ORS's action in this case is that federal funds continue to flow to a government recipient which has flatly refused full compliance with an official order of its State and with the State and Local Fiscal Assistance ("Revenue Sharing") Act.

II. BUFFALO, N.Y.

The attached record in the Buffalo revenue sharing case shows that ORS continues erroneously to impose limitations on its authority to act in cases of racial discrimination. Some months ago the Department of Justice sued Buffalo under Title VII of the Civil Rights Act of 1964 and Section 123(b) of the Revenue Sharing Act charging it with racial discrimination in the Police and Fire Departments. Shortly thereafter we assisted the New York Civil Liberties Union in the filing of a formal administrative complaint before ORS charging that both Buffalo departments received revenue sharing funds and were therefore in violation of the Revenue Sharing Act. In response to that complaint, ORS has taken the position that simply because the Justice Department filed separate litigation against the Buffalo Police and Fire Departments, ORS is "precluded" from taking any enforcement action whatsoever against Buffalo.

The enclosed letter from the New York Civil Liberties Union, on which my staff assisted, shows the falsity of ORS's position. The agency's avoidance of responsibility simply prevents the use of the full measure of federal enforcement powers against local governments which practice discrimination.

III. CHICAGO, ILL.

As you may know, the City of Chicago has recently been placed under federal court order in Illinois, after a due process evidentiary hearing, to cease all acts of discrimination in hiring and promotions in the Police Department. Despite the fact that approximately 75% of Chicago's revenue sharing dollars, from 1972 to the present, have been allocated to that Department, ORS has failed to order, or even request that a court order, cessation of funding temporarily until the City comes into compliance. The agency's refusal to utilize a temporary fund cut-off seriously weakens federal civil rights enforcement. Accordingly, we have filed the enclosed motion and brief in our litigation in federal court in Washington which charges ORS with failure to take adequate enforcement steps against Chicago. Essentially we argue that ORS has always had ample authority temporarily to escrow funds destined for Chicago and has additional authority now. We ask that the court order ORS to take new steps against Chicago. A hearing has been set on the motion for December 18 before Judge John Lewis Smith.

If you have any questions concerning these or related matters, I will be happy to respond to them. In the meantime, I will advise you of all pertinent developments as appropriate.

Very truly yours,

HAROLD HIMMELMAN.

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, D.C., January 3, 1975.

Hon. EDMUND S. MUSKIE,
U.S. Senate, Washington, D.C.

DEAR SENATOR MUSKIE: As you know, I have a copy of Mr. Himmelman's letter to you dated December 17, 1974 in which he makes certain statements concerning three cases involving discrimination in the expenditure of general revenue sharing funds. I cannot permit the opportunity to pass without rebutting Mr. Himmelman's allegations which, in some instances, are substantially incorrect and misleading.

I. MONTCLAIR, N.J.

The Office of Revenue Sharing is satisfied that our action in the Montclair case is the correct one to end discriminatory employment practices in the police and fire departments. Mr. Himmelman is aware that we are monitoring the Montclair situation and will continue to do so to assure ourselves that the representations of the city, set forth in the Mayor's letter of October 21, 1974 to me, will be fully and fairly implemented. Further, it is our judgment that the City of Montclair is entitled to its revenue sharing allocation during the period during which the city is implementing corrective employment measures in the two departments.

Finally, Mr. Himmelman seems critical of the fact that the City of Montclair has taken an appeal of the state hearing examiner's order which ORS relied upon for its determination of discrimination. This, of course, the city has a legal right to do. I trust that our judicial system never reaches the point where a litigant is discouraged from using the courts to seek his full judicial remedies because of criticism, adverse comment or other negative reaction. The appeal of this case to a higher court by Montclair, in our opinion, has not had any bearing on the efficacy of the corrective action being taken.

II. BUFFALO, N.Y.

It is the position of Mr. Himmelman that ORS continues erroneously to impose limitations on its authority to act in cases of racial discrimination. It is our position that, since the Justice Department has conducted an investigation, and has filed suit against the City of Buffalo under Title VII of the Civil Rights Act of 1972 and Section 122(c) of the revenue sharing Act, it would be duplicative for ORS to take similar actions. Taking parallel action with the Justice Department would have adverse consequences to other complainants by using already limited ORS manpower resources.

We have been in continuous contact with the Justice Department since January, 1974 regarding the Buffalo case and have been consulted on each major move by Justice regarding the City of Buffalo. For example, ORS audited the city in February, 1974 at the request of the Department of Justice and determined that general revenue sharing funds were being used in both police and fire departments.

The present posture of the Buffalo case as it exists in the Civil Rights Division of the Department of Justice and in the U.S. District Court for the Western District of New York is that the city filed its answer on December 5, 1974 after a request on November 13, 1974 by the plaintiff for admissions and denials.

III. CHICAGO, ILL.

Since Mr. Himmelman's letter of December 17, the United States District Court for the District of Columbia has ordered no further payment of revenue sharing funds to the City of Chicago. The city has, of course, vigorously protested that decision and, as a result, the Secretary of the Treasury is now the defendant in a suit filed by the City of Chicago in the U.S. Court of Appeals for the 7th Circuit. The City of Chicago is seeking, before the 7th Circuit, an order that would require the Secretary of the Treasury to pay the City of Chicago its revenue sharing payment scheduled for January 6. The Office of Revenue Sharing, through its representatives in the Department of Justice, is vigorously opposing that action.

Please be assured that the matters brought to our attention by Mr. Himmelman's letter of December 17, 1974 have received, and will continue to receive, constant and personal attention by the staff of the Office of Revenue Sharing.

Sincerely,

GRAHAM W. WATT,
Director, Office of Revenue Sharing.

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, D.C., January 9, 1975.

HAROLD HIMMELMAN, Esq.,
Lawyers' Committee for Civil Rights Under Law,
Washington, D.C.

DEAR MR. HIMMELMAN: It is inaccurate to state, as you did in your December 3, 1974 letter to me, that ORS has "closed" its investigation into the discriminatory employment practices of the Town of Montclair's Police and Fire Departments. This characterization of our posture in the Montclair case is, simply, not true.

The terms of our present settlement with Montclair clearly require a continuing active role for the Office of Revenue Sharing. We shall be carefully monitoring the progress toward elimination of the vestiges of discriminatory employment practices pursuant to the settlement agreement reached between the Town and ORS. As you probably know, the Civil Rights Division of the Department of Justice assisted ORS in reaching our understanding with Montclair.

In addition to the substantial modification in the Town's hiring practices, we have required Mayor Bonastia to report to us quarterly as to the progress being made under the affirmative action plan. Should we find that the Town is not faithfully fulfilling the conditions of our settlement agreement or that the steps undertaken to date do not have the intended effect of eradicating and correcting the effect of past discriminatory practices, further action will be considered by ORS.

"Closing" this case and turning away from the discriminatory practices of Montclair prior to implementation of the settlement agreement would be contrary to the established policy of the Office of Revenue Sharing. You can be assured, therefore, that such course of action was never considered and I would hope you would make this point clear when discussing our civil rights enforcement program in the judicial or political forum.

Sincerely yours,

GRAHAM W. WATT,
Director, Office of Revenue Sharing.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW,
Washington, D.C., January 22, 1975.

Re Montclair, N.J.

Mr. GRAHAM W. WATT,
Director, Office of Revenue Sharing,
U.S. Department of the Treasury,
Washington, D.C.

DEAR MR. WATT: I am in receipt of your January 9, 1975, letter in which you object to my having stated in my letter to you of December 3 that your office had "closed" its investigation into the discriminatory employment practices of the Town's Police and Fire Departments. I am frankly puzzled by your criticism because in your letters of November 12, 1974, to Governor Brendon Byrne and to me you announced that you were "officially closing" your investigation of the Montclair case.

Apparently you believe the imposition of a quarterly reporting requirement on Montclair constitutes continuing enforcement. This would be true only if the settlement agreement were complete. But that is hardly the case here, and thus "closing" your investigation means cessation of necessary enforcement action.

In your own letter of August 6, 1974, to Mayor Bonastia finding the Town of Montclair in violation of Section 122 of the Act, you state that in order to come into compliance Montclair must immediately and actively initiate the remedies ordered by the New Jersey State Division on Civil Rights in its June 17, 1974, decision against the Town. Yet you have closed your investigation without requiring the entry of a final settlement agreement and without requiring compliance with many of the major aspects of the State's Order. Specifically:

1. We have yet to see any final written "settlement agreement" between ORS and Montclair which clearly imposes all the terms and conditions you are monitoring to determine Montclair's compliance with the nondiscrimination requirements of Section 122 of the Act.

2. If you do not have a final settlement document, why not? If you suggest that dozens of letters over several months constitute an "agreement," why do you refuse to do what other federal agencies do in settling cases, namely, require a recipient of federal funds charged with discrimination to sign a final consent agreement which thoroughly and concisely spells out each and every condition of the settlement?

3. In paragraph 8 of the Order of the New Jersey State Division on Civil Rights, the Montclair Police Department is required to discontinue the use of supervisory evaluations in promotions. But nowhere in your "settlement agreement" or your exchange of correspondence with Montclair does the Town expressly agree to comply with this provision. If the Town has not expressly agreed to comply with this requirement, how do you justify closing your investigation?

4. Paragraph 5 of the State's Order requires that Charles Lige and all other minority candidates who took a written examination in November, 1971, be reconsidered for appointment. While I understand that Mr. Lige has in fact been employed, where in the "settlement agreement" or your exchange of correspondence does Montclair agree to reconsider all other minority candidates? If the Town has not expressly agreed to comply with this requirement, how do you justify closing your investigation?

5. Where in the "settlement agreement" or your exchange of correspondence does Montclair agree to comply with the State's Order, at paragraph 6, that it hire one qualified minority applicant for every one qualified white applicant until the total number of minority officers in the Fire Department equals at least 15 persons? If the Town has not expressly agreed to comply with this requirement, how do you justify closing your investigation?

6. Where in the "settlement agreement" or your exchange of correspondence does the Town agree to comply with the requirement in paragraph 11 of the State's Order that one qualified black applicant be promoted in the Police Department for each one qualified white applicant until 50% of its minority applicants have been promoted? If the Town has not expressly agreed to comply with this requirement, how do you justify closing your investigation?

7. Where in the "settlement agreement" or your exchange of correspondence does the Town agree, pursuant to paragraph 16 of the State's Order, to post copies of the State's Order as required? If the Town has not expressly agreed to comply with this requirement, how do you justify closing your investigation?

8. You seem to place much emphasis on your "reporting" requirement. Where in your "settlement agreement" or exchange of correspondence does Montclair expressly agree to comply with the specific reporting requirements imposed upon it in paragraphs 12 and 13 of the State's Order, namely, to state the name and race of each candidate for appointment and promotion, their test scores, and the name, race and reasons for rejection or acceptance of all candidates? If the Town has not expressly agreed to comply with these particular reporting requirements, how do you justify closing your investigation?

Thus, unless you have answers to these eight points, your repeated reference to a "settlement agreement" entered between ORS and the Town which you are "carefully monitoring" to assure nondiscrimination is meaningless. In fact there is no legally sufficient agreement and you have imposed no requirement that Montclair comply with any part of the State's Order outside of testing. In essence, you have failed to require compliance with your own policy.

Indeed, the New Jersey State Division on Civil Rights and their attorneys have recently confirmed that the State regards Montclair as in a continuing state of noncompliance.

Finally, contrary to the assertions in your January 3 letter to Senator Muskie, we have never suggested that Montclair does not have a right to appeal from the State's June 17 Order. Rather, we have simply taken the same position you took in your letters of August 6 and September 16, 1974, to Montclair Mayor Bonastia: that the Town's right to appeal does not prohibit ORS from taking appropriate action pending final legal resolution of the case. You, however, have again failed to carry out your own policy. Although Montclair has every right to appeal to higher courts from the State's Order, it has no right to continued federal subsidies while refusing full compliance with the revenue sharing law and with a valid State Order issued after full due process hearings.

We believe, therefore, that your "settlement" and "closing" of the case at this time destroys not only effective State law enforcement but adequate federal enforcement as well. Apparently your desire to appear conciliatory and to reach agreements with recipients blocks your willingness to impose in fact

the basic conditions of civil rights compliance which the federal government has traditionally imposed and which the law requires.

Sincerely yours,

HAROLD HIMMELMAN.

EXHIBIT A

State of New Jersey Department of Law and Public Safety Division
on Civil Rights, Docket Nos. EG13RM—6282 EG13RM—6883

CHARLES S. LIGE AND GILBERT H. FRANCIS, DIRECTOR, DIVISION OF
CIVIL RIGHTS, COMPLAINANTS

V.

TOWN OF MONTCLAIR; MAYOR AND COMMISSIONERS, RESPONDENTS

FINDINGS, DETERMINATION AND ORDER

Appearances: George F. Kugler, Jr., Esq., Attorney General, State of New Jersey, by: David S. S. Litwin, Esq., *Deputy Attorney General, for the Complainants*; Bennett, Shepard, Cooper, and Dickson, Esqs., by: Joseph Dickson, Jr., Esq., for the respondents.

BY THE DIRECTOR

A hearing in this matter was held before Julius Wildstein, Esq., a Hearing Examiner for the Division on Civil Rights on January 7 and 8, 1974. On May 16, 1974 the Hearing Examiner filed a report with the Director containing Recommended Findings of Fact and Conclusions of Law.

In accordance with Rule 13:4-13.1 of the Division's Rules of Practice and Procedure, copies of the Hearing Examiner's Recommended Findings of Fact and Conclusions of Law were sent to counsel for the respective parties. No objections to the Hearing Examiner's report have been filed in the Division's offices.

Having given independent and careful consideration to the entire record in this matter, including the transcript of the hearing and all evidence introduced during the hearing, I concur in the Findings of Fact and Conclusions of Law recommended by the Hearing Examiner with exception to his statement at page nine (9) of the Findings of Fact that the Montclair Fire Department had 89 whites and 3 blacks. The transcript at page 79 reflects that there was a total of 89 officers in the fire department, of whom 86 were white and 3 were black.

With the inclusion of the aforestated, I adopt the Hearing Examiner's Findings of Fact and Conclusions of Law as my own and incorporate by reference and make the same a part of the Order as though they were set forth in full herein. I find that the respondents maintained practices and procedures for the determination of the eligibility of persons for entrance into the police and fire departments and the promotion of persons within the police department which have a discriminatory effect on minority persons in violation of N.J.S.A. 10:5-12(a) and 10:5-4.

Accordingly, it is on this 17th day of June, 1974 hereby ordered and decreed that:

1. All recruiting, processing, hiring, upgrading and all other terms and conditions of employment shall be maintained and conducted in a manner which does not discriminate nor have the effect of discriminating on the basis of race, creed, color, national origin, ancestry, marital status or sex in violation of the New Jersey Law Against Discrimination N.J.S.A. 10:5-1 *et seq.*

2. Respondent shall henceforth discontinue use of all written entrance examinations for police and fire departments until such time as the examinations may have been professionally validated, subject to approval by the Division on Civil Rights, at which time they may be used to determine eligibility of applicants.

3. The oral interviews conducted by the Montclair Public Safety Examining Board as a method for recommending the hiring of applicants to the Montclair Police and Fire Departments shall be discontinued until such time as objective standards are developed for determining the criteria which are relevant to the job performance of police and fire officers. A method of objectively rating these criteria in a non-discriminatory manner shall also be devised by respondents. Respondents shall submit all proposals concerning review by the Examining Board to the Division on Civil Rights for approval before adopting them.

4. In the absence of professionally validated tests and recommendation by Examining Board, respondents shall devise a method of selection with non-discriminatory standards for appointment to the police and fire departments. This method of selection shall be subject to the review and approval of the Division on Civil Rights and shall be submitted to the Division on Civil Rights within sixty (60) days of this Director's Order.

5. Complainant, Charles Lige, and all other minority candidates who took written entrance examinations on or about November 6, 197- shall be reconsidered for appointment under the method of selection described in paragraph 4 immediately above and notified in writing if determined to be qualified.

6. Future appointments to the Montclair Fire Department shall be conducted on the following basis: One (1) qualified minority applicant shall be selected for every one (1) qualified white applicant until the total number of minority officers on the Fire Department equals at least fifteen (15) persons.

Initial selection of minority candidates shall be made from the pool of qualified minority applicants which result from the re-evaluation process as set forth herein in paragraphs 4 and 5 and shall continue until such pool is exhausted.

7. Respondent shall discontinue all written examinations used in part or in whole for purpose of determining the promotability of police officers within the Montclair Police Department until such time as the examinations may have been professionally validated, subject to approval by the Division, at which time they may be used to determine eligibility of applicants.

8. Respondents shall henceforth discontinue the use of supervisory evaluations in the Montclair Police Department until objective standards have been developed for determining each of the qualities being evaluated. An objective method for rating each of the qualities in a non-discriminatory manner shall also be devised and applied to future evaluations. Respondents shall submit all proposals concerning future evaluations to the Division on Civil Rights for approval prior to adopting them.

9. In the absence of professionally validated tests, officer evaluations, and recommended by the Examining Board, respondents shall devise a method of selection with non-discriminatory standards for determining the promotability of persons in the police department. This method of selection shall be submitted to the Division for review and approval within sixty (60) days of this Director's Order.

10. Respondents shall re-evaluate, within thirty (30) days of Division on Civil Rights' approval of the method of selection devised pursuant to paragraph 9, the Black applicants who were denied promotions in 1971.

11. The Black applicants who are deemed qualified by this re-evaluation shall be so notified in writing. Future promotions in the Montclair Police Department shall be made on the following basis.

One qualified Black applicant shall be promoted for every one qualified White applicant until 50% of those minority applicants deemed qualified by the re-evaluation have been promoted.

12. Reporting: Respondents shall submit to the Division on Civil Rights the following information for review at least twenty (20) days prior to any appointment date: (a) Name and race of each candidate for appointment; (b) test scores for all candidates if professionally validated tests were used; (c) name, race, and reason(s) for rejection and/or acceptance of all candidates; and (d) respondents, upon request by Division on Civil Rights, shall make available all information and material used as the basis for acceptance or rejection of all applicants.

13. Respondents shall submit to the Division on Civil Rights within twenty (20) days prior to any promotion date, the following information for review: (a) Name, rank, and race of each candidate for promotion; (b) test scores for all candidates, if professionally validated tests were used; (c) job performance evaluations for all candidates; and (d) name and race of each candidate promoted and the rank to which he was promoted.

14. Respondent shall submit to the Division on Civil Rights the results of the re-evaluation of the minority applicants who took the November 6, 1971 written entrance evaluation for Montclair Police and Fire Departments as provided by paragraph 5.

15. Respondent shall submit to the Division the results of the re-evaluation of the minority applicants for promotions as provided by paragraph 10.

16. Copies of this Order shall be posted in conspicuous places in the Montclair Police and Fire Departments.

17. This Order shall run for a period of five (5) years or until the provisions of paragraphs 6 and 11 have been fulfilled, whichever is longer.

18. Jurisdiction is hereby retained by the Division on Civil Rights to observe and require compliance with the terms of this Order and to issue, if necessary, supplemental orders, in accordance with the foregoing provisions.

VERNON N. POTTER,

Acting Director, Division on Civil Rights.

Dated June 17, 1974.

State of New Jersey, Department of Law & Public Safety, Division on Civil Rights, Docket Nos. EG13RM-6282, EG13RM-6833

CHARLES S. LIOE AND GILBERT H. FRANCIS, DIRECTOR OF THE NEW JERSEY
DIVISION OF CIVIL RIGHTS, COMPLAINANTS

V.

TOWN OF MONTCLAIR, MAYOR AND COMMISSIONERS, RESPONDENTS.

RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF HEARING
EXAMINER JULIUS WILDSTEIN

Appearances: George F. Kugler, Jr., Attorney General, by: David S. Litwin, Deputy Attorney General, for the complainants; Joseph Dickson, Jr., Esq., for the respondents.

I. Introduction

Julius Wildstein, Esq., designated from the panel of hearing examiners by the Director of the Division on Civil Rights in the Department of Law and Public Safety to conduct a consolidated hearing in the above-entitled matter and to recommend findings of fact and conclusions of law, pursuant to the Law Against Discrimination as amended (N.J.S.A. 10:5-8(L)), respectfully submits herewith his report thereof, following hearings held in this cause on January 7 and 8, 1974. A stenographic record of the hearings was taken, consisting of 388 pages. Specific references herein to this record will be indicated by "T" followed by a dash and the page number in the transcript. All underscoring is that of the Hearing Examiner.

II. Preliminary Findings of Fact

Upon the verified complaints filed in this cause (Docket Nos. EG13RM-6382 and EG13RM-6833), the finding of probable cause and the notice of hearing, and upon all the evidence adduced upon the aforementioned consolidated hearings, the following preliminary facts are found:

A. NATURE OF PROCEEDINGS AND CHARGES

The within proceedings were instituted by Charles Lige, who is black (No. 6382), and by Gilbert H. Francis, Director of the Division on Civil Rights (No. 6833), by way of separate amended complaints against respondents Town of Montclair, Mayor and Commissioners,¹ but consolidated * * *.

The complaints seek to enforce those provisions of the Law Against Discrimination as amended (N.J.S.A. 10:5-1, et seq.), which prohibit racial discrimination in employment, and more particularly, N.J.S.A. 10:5-4, which provides: "All persons shall have the opportunity to obtain employment, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation, publicly assisted housing accommodation, and other real property without discrimination because of race, creed, color, national origin, ancestry, age, marital status or sex, subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right." and N.J.S.A. 10:5-12(a) which implements the civil rights established in the above-quoted section of the Law in the following language:

"It shall be an unlawful employment practice . . . (a) For an employer, because of the race, creed, color, national origin, ancestry, and marital status or sex of any individual, or because of the liability for service in the Armed Forces of the United States, of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employ-

¹ The original complaint had named individual commissioners as respondents, but the amended complaint deleted those references and referred simply to Mayor and Commissioners, Town of Montclair. The complaint will be accepted as so amended.

ment; provided, however, it shall not be an unlawful employment practice to refuse to accept for employment an applicant who has received a notice of induction or orders to report for active duty in the armed forces; provided further that nothing herein contained shall be construed to har an employer from refusing to accept for employment any person on the basis of sex in those certain circumstances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise."

The *Lige* complaint of December 27, 1971, as amended on August 10, 1973, and November 15, 1973, and as joined by the Director, charges that Lige took the firemen's test of the respondent municipality on November 6, 1971, and was thereafter informed that he had failed to meet the minimum requirements. Lige alleges that the testing and selection procedures of the Town were unlawfully discriminatory. He did not seek damages. T-25; T-48.² The *Lige* complaint, as joined in by the Director, further charges that the November 6, 1971, examination and the selection techniques of the Town had a discriminatory effect on black applicants for both police and fire positions.

The *Francis* complaint, dated June 14, 1972, and amended on March 8, 1973, and August 23, 1973, charges that the promotional examinations, procedures and standards utilized by the respondents' police and fire departments on or about December 29, 1971, had a disparate effect on minority employees and were, therefore, illegally discriminatory.

It was stipulated that the only differences between the two complaints was that the *Lige* complaint involved appointments and the *Francis* complaint promotions. Both systems are identical, except that as to promotions, an additional step was involved (primarily evaluations by superiors). T-107. The exams for appointment and promotion differ. T-106.

In elaborating on the charges at the commencement of public hearing, the deputy attorney general alleged that the examination had a disproportionate impact on blacks being tested and that there was no necessity for the tests. T-4, 6, 8. He also alleged that the utilization of oral interviews and the unfettered discretion of the director of the two departments as to whom to select was discriminatory. T-5 to T-6. He stated that the black population of Montclair was 27 percent and the black population of the department was 15 percent. T-7. He emphasized that he was not alleging that any of the respondents had evidenced any discriminatory intent, but that the effect of the selection procedures was to illegally disadvantage minority groups. T-7 to T-9.

Although the respondents did not file any written verified answer or any other defensive pleading in response to the complaint as they were permitted, but not required to do under R.S. 105-16, they nevertheless, during the course of the hearings, disclaimed any acts of discrimination. The respondents' attorney argued that the disparity was caused by the lack of applicants, and stated that the only change in the departments' racial ratios since the time of the filing of the original complaint was that one black had left and one black probationary member had been added. T-12 to T-16.

B. A SUMMARY OF THE EVIDENCE

1. Testimony of Charles S. Lige

The complainant testified that in November, 1971, he applied to the respondent Town for a position as fireman and thereafter he took a written examination given by respondents on or about November 6, 1971. When Lige took the Montclair test, 80 to 100 people had taken it with him. T-44. A week later Lige received a letter, exhibit C-1, signed by Chief of Police Reardon, informing him that the Examining Committee had "determined that your results of your application and examination are inadequate for the minimum requirements which the committee feels are necessary for the position." T-17. On November 15, 1971, Lige went to the office of Chief of Police James Reardon and asked why he had failed. Reardon replied only that Lige had not qualified for the examination. T-18, 19. Lige then filed his complaint in the Division. T-20. He stated that he had graduated from a predominantly white high school in 1964 in Logan, West Virginia. T-28, 40-41. He then attended Bluefield College in West Virginia, for one year. T-41-42.

² The transcript of the public hearing consists of two volumes containing 388 pages. Reference to the transcript will be made by "T" followed by the page number cited.

2. Testimony of Carmen Cappadona

a. Regarding Lige complaint

The Division field representative testified that he had investigated the instant cases.² He found that one applying to the police or fire department (which are combined in the Department of Public Safety) must submit a written application and take a written examination, after which those who passed the test are screened by the Montclair Public Safety Examining Board—which interviews those who have passed the test and makes recommendations to the Commissioner (also referred to as Director) of the Department of Public Safety, who in turn makes the final decision regarding appointment. T-52. The Examining Board is selected by the Commissioner of Public Safety, an elected official who appoints is also referred to as the director of the department. T-54.

The respondent's answers to the interrogatories, Exhibit C-2, state in part that the November 6, 1971, examination was scored by Dr. E. M. Glasscock, Chairman of the Examining Board. Twenty-nine of the fifty-eight taking the exam passed. Four of those passing the exam were eliminated after investigation by reason of a police record, failure to meet residency requirements of the State and physical handicap. Four whites and no blacks became eligible for appointment as firemen, and one white and no blacks were appointed as policemen. The last man appointed to the fire department prior to the test was appointed on October 19, 1970. Testing has been required since at least November 25, 1952. Forty-one of the present firemen were appointed prior to that time.

Cappadona testified that he interviewed Dr. Glasscock of the Examining Board on September 11, 1972, and he stated that in November of 1971, the Wonderlic examination and the California Psychological Inventory had been used in screening. See T-60. The latter test was administered but was not used to determine if an applicant passed or failed; on the Wonderlic test, a minimum score of 17 is needed to pass and those persons with scores below the bottom 25 percentile were eliminated. T-60 to T-63. Exhibit C-3 is the Wonderlic test itself and Exhibit C-4 is a letter which Cappadona received from Dr. Glasscock confirming the above and stating that he grades the examinations himself. T-61 to T-62. None of the questions on the Wonderlic test directly concern police or fire work. Glasscock said that the Wonderlic test was not professionally validated. T-64, ii. He stated that at the oral interview he and many other members of the Examining Board had asked those questions which seemed relevant to him. T-67. No guidelines had been given to members of the Examining Board as to how to arrive at their decision. T-68. Glasscock had told Cappadona that there was no correlation between the test scores and his recommendations. T-68.

Mr. Shepherd of the Examining Board, an Attorney, told Cappadona that personality was an important factor in evaluating those appearing before the Board. T-69. Shepherd said that the Board makes its decisions based on consensus. T-72.

Exhibit C-5 is a list provided by the respondents showing that of the men who took the joint examination on November 6, 1971, 40 were white and 19 were black. Of those passing, 26 were white and three were black. After interviews on December 11, 1971, two blacks and 13 whites were recommended. One black and six whites were appointed to the police department as of January 1, 1972.

Cappadona spoke with Dr. Ralph Rogers, a member of the Examining Board, on November 29, 1972, and he stated that the Board had received no specific instructions as to how to arrive at their recommendations and added that their questions were aimed at ability, attitude, nervousness and prior attitude. T-74-75. Exhibit C-7 is a list of policemen as of June 1, 1972. Exhibit C-8 is a list of firemen as of April 21, 1972. The police department had 89 whites and 15 blacks and the fire department had 89 whites and three blacks. T-77 to T-79. Those figures were the same as of December 27, 1971—the date of the filing of the complaint. T-81, 89. There were three categories of applicants; fire, police, and police for fire. Applicants in all three categories were given the Wonderlic test. T-82. The respondents said that they did not know the race of unsuccessful applicants. T-81.

Cappadona investigated to ascertain the race of applicants by talking to them and subpoenaing their phone records. T-83 to T-89. Exhibit C-9 was compiled by him. T-91 to T-97. It shows that 19 blacks and 39 whites were tested. Three blacks (16%) and 26 whites (67%) passed. T-98, 99. Then, following investiga-

² The respondent, Commissioner McLaughlin, later testified that Cappadona's testimony was accurate as to the selection and promotion procedures. T-324, 325.

tion by the Detective Bureau, two blacks and ten whites were eliminated. T-99. One black and 16 whites were interviewed by the Examining Board and one black and 14 whites were appointed to a position or to the waiting list. T-100, 101. Thus, six percent of the black applicants and 36 percent of the white applicants were appointed.

Cappadona continued that Dr. Rogers had told him that the vote of the Examining Board on applicants was always unanimous. T-110 to T-111. No one was appointed to the police or fire departments after November 6, 1971. T-116.

b. Regarding Francis complaint

Cappadona testified that the respondents' promotion procedures were similar to appoint procedures and involved written exams with pass-fail grades for positions from patrolman up to sergeant but not for lieutenant and above, and also involved interviews by the Examining Board of those passing the exams. T-130 to T-132. The Examining Board was also given the evaluation scores on job performance assigned by the supervisors of those seeking promotion. T-132. The factors considered in the evaluational reports are: 'reliability, cooperativeness, job performance, physical condition, potential, adaptability, conduct, initiative, bearing, dress, application, job knowledge, public relations, volume of work, report writing, equipment care and operation, accuracy, practical judgment, ability to follow directions and leadership. The Board made its recommendations to the Director of the Department of Public Safety, who in turn made all final decisions. T-132. Exhibits C-11 (A), (B) and (C) are the examinations given on September 25, 1971, to captains, lieutenants and sergeants, respectively. T-135, 136. Exhibit C-10 are the respondents' answers to interrogatories relating to the Francis complaint.

As of the date of the examinations, the Examining Board consisted of Dr. E. M. Glasscock, a psychologist, Robert B. Shepard, Jr., an attorney, Lee D. Arning, an investment broker, Edward F. Robinson, a college professor, and Ralph Rogers, a school principal; Dr. Rogers is black and the other members are white. T-134. The promotional examination is prepared by the Board. Richard Pettingill, who was director in 1971, stated to Cappadona on April 8, 1972, that he drew up the promotional exams himself from suggestions from subordinates, Essex County Police and prior Police Academy exams. T-137. Pettingill said that the tests had not been professionally validated. T-138. Pettingill wrote out the answers for the promotional examination questions based on answers given by his chief and deputy chiefs. T-140. Exhibit C-12 is the master answer sheet for the essay portion of the sergeants exam. T-140. Pettingill took the exam score and service record into account in making promotions and considered the opinion of the Examining Board, assigning them the following weights: exam, 45%; service record, 45%; and Examining Board recommendation and seniority, 10%. T-141. Also taken into account was the employee's "public relations" value, i.e., how he presented himself to the public. T-143. The Examining Board recommendations fell into the following categories: highly recommended, recommended, acceptable, and not acceptable. T-143, 144.

On September 11, 1972, Cappadona interviewed Dr. Glasscock, who was then chairman of the Examining Board. T-144. Glasscock confirmed that the promotional examinations were not professionally validated. T-144. Exhibit C-13 is a list of appointments for interviews with the Board for promotional candidates on November 20, 1971, showing that the interviews were scheduled twenty minutes apart. T-146. The Board received ten minutes before the interviews the examination scores, the supervisor's evaluation scores and the personnel files. T-147, 148. Glasscock said that the Board looked for leadership, ability, initiative and good judgment. T-149. Attending the interviews by the Board were the director, police chief and fire chief. T-151 to T-152.

Cappadona's interview with Dr. Rogers on August 8, 1972, brought out the fact that individual Board members gave different weight to the interviews, evaluations and exam scores. T-153. Exhibit C-14 is the working paper which Rogers and the Board used during the interviews. T-154 to T-155. It shows the examination score, evaluation score and "cumulative" score for each applicant. Dr. Rogers averaged together the exam, evaluation and interview scores to get one cumulative score upon which he ranked the applicants. T-157 to T-158.

Shepard told Cappadona that he asked applicants at the interviews how they felt about the men working under them and whether they had worked at the sergeant's desk; personality was an important factor for him. T-158. Exhibit

* See Exhibit C-10, attachment entitled "Rating Characteristics For Evaluation Report."

C-15 is a list of the scores in the September 25, 1971, promotional exam; resignations of "B" refer to blacks. T-159. Shepard said that the Board asked about education, interest in the job and "any question that comes to the questioner's mind" could be asked. T-161. Exhibit C-16 shows the composition of the Police Department as of January 1, 1972, and February 1, 1972. T-162 to 164.

Each promotional candidate is evaluated by his superiors on his shift. T-170. Thus, the number of men evaluating each subordinate would vary. T-173. Each supervisor once a year filled out a separate form, attached to question 5A of Exhibit C-10. T-172. No instructions were given to evaluating officers as to how they should evaluate their subordinates. T-171, 172. This evaluation system is apparently no longer in use. T-183. The "averaged" evaluation scores were given to the Board. T-236. Number 3A of Exhibit C-10 shows the scores of the averaged evaluations reports, Exhibit C-7 shows the race of the candidates and Exhibits C-14 and C-15 shows their exam and evaluation scores. T-174. Exhibit C-17, prepared by Cappadona, shows how the different levels of promotees scored in the evaluations report (with "B" representing blacks and slashes referring to repetitive scores). T-177, 178. Exhibit C-18, also prepared by Cappadona, shows the exam scores by job categories of promotional applicants, with the line indicating the cutoff score for consideration of "70". T-178 to T-181. Exhibit C-19, prepared by Cappadona, is a list of the exam and evaluation scores and promotional results for all applicants and an indication of the race of the supervisors making the evaluations. C-19 thus shows that six of the seven black candidates for promotion were evaluated solely by white superior officers. C-19, and C-20 compiled from other exhibits, also show how applicants of each race fared at each stage in the promotional procedure as a result of the September 25, 1971, examination. T-192 to T-202.

Therefore, Exhibits 17, 18, 19 and 20 recapitulate, in easily understandable fashion, the data contained on most of the other exhibits. They show that as to supervisory evaluation scores, the one black lieutenant scored below the two white lieutenants, the one black sergeant scored below the six white sergeants, and the seven black patrolmen and detectives were ranked number 7, 15, 20, 23, 24, 34 and 36 among the 36 patrolmen and detectives on the police force. (Exhibit C-17). On the examination, the thirteen patrolmen and detectives passing were all white and the seven black patrolmen and detectives failed together with sixteen whites. See Exhibit C-18. Among sergeants, the one black failed (receiving the lowest score), together with four whites, and two whites passed. See Exhibit C-18. Among lieutenants, the one black failed (receiving the lowest score), together with the two whites. (Exhibit C-18). Thus, in the test for sergeants, seven blacks took the written test, none (or 0%) passed, none were interviewed and none were promoted, while 29 whites took the test, thirteen (or 45%) passed, thirteen were interviewed and five (or 17%) were promoted. See Exhibit C-20. In the test for lieutenant, one black took the test, one was interviewed and none were promoted, while six whites took the test, six were interviewed, and five (or 83%) were promoted. See Exhibit C-20. For captain, one black took the test, one was interviewed and none were promoted, while two whites took the test, two were interviewed and two (or 100%) were promoted. See Exhibit C-20. Thus, none of the nine black candidates for all promotions were promoted, while 12 of the 37 white candidates (or 32%) were promoted. Exhibit C-20.

The composition of the police department as of June 1, 1972, was: chief and two deputy chiefs, white; captain, 1 black and 8 whites; lieutenant, 1 black and 6 whites; sergeant, 1 black and 7 whites; detective, 5 blacks and 10 whites; and patrolmen, 7 blacks and 54 whites, for a total on the force in all positions of 15 blacks and 89 whites. Exhibit C-7; T-79.

The comparison of the fire department as of April 21, 1972, was: chief and five deputy chiefs, white; captain, 1 black and 9 whites; lieutenant, no blacks and 12 whites; firemen, 2 blacks and 59 whites. Thus, the total fire department breakdown was 86 whites and three blacks. T-9; Exhibit C-8.

Cappadona testified that there is no way for an applicant to appeal the results of tests or the decision on his application. T-200 to T-202. He stated that Pettigill had told him that prior to 1971, a different examination was given containing general-type questions related to general police knowledge. T-209. From 1969 to 1971, no promotions were made. T-210. In 1969, three blacks and two whites were promoted. T-210, 212. All test papers for promotions were graded anonymously. T-220. He stated that "validation" to him referred to the establishment of a relationship between high test scores and high job performance. T-223. Dr. Glasscock said that the California Psychological Inventory was administered but given no weight because it had not been validated. T-241 to 243.

At the conclusion of the State's case, the deputy attorney general introduced for the record admitted into evidence the following statistics from the 1970 United States Census: Montclair population, 11,985 (27.2%) black, out of 44,055. T-253,259. Essex County population, 279,068 (30%) black, out of 929,984. T-259. He further stated that he had considered calling an expert witness, but had determined not to do so until the respondents had made some colorable attempt to show the job relatedness of the examinations. T232.

3. Testimony of Theodore McLaughlin

McLaughlin had been a Montclair Town Commissioner since 1964 and Commissioner of Public Safety since May of 1972. T-284. After May, 1972, the department needed more men so he placed a newspaper advertisement with regard to the examination. T-291 to T-292. The advertisement announced the examination for police and firemen, noting, however, that there was no current openings for the fire department. T-292.

He stated that the respondents discontinued use of the Wonderlic test which had been given in November, 1971, because "I thought perhaps we could make them a little different, a little better with that thought in mind that we had to be fair to the applicants [and to] the people of the Town of Montclair, and the best people we could obtain would be assigned or picked for the position." T-293, 296. He felt that the Wonderlic test "wasn't necessarily a fair test," T-319 to T-320, and he "did not think much of the test." T-326. Exhibit R-1 is the form of Evaluation Report for the Examining Board which the department is now using for evaluation and they have used it at one evaluation in late 1973. T-299 to T-304. A physical test has also now been added. T-305.

The new examinations utilized by the police and fire divisions (Exhibits R-2 and R-3) were recommended to them by teachers at Montclair State College, T-314 to T-319, 329-330, and has been given for promotion in 1973, when 40 to 50 men took it and it was determined that the cut off score would be 70 since that would give the department enough applicants. T-335.

McLaughlin stated that Cappadona in his testimony had accurately described the promotion and entrance selection procedures. T-324, 325. Applicants who failed the 1971 test were not able to have their applications brought before the Examining Board. T-306. Recommendations of the Board are unanimous, and its decisions are final if concurred in by the Commissioner. T-310. Three men have been hired by the fire department since 1970, one of whom (Espey) was black. T-310, 311. All three were chosen from a group of 14 whites and 2 blacks. T-347. He stated that as Commissioner he had the power to establish or dissolve the Examining Board and that its members served at his pleasure; there is no ordinance governing standards for selection or promotion. T-336 to T-339. The police regulations say that there is to be a test for promotions, except to chief. T-341. He was aware of no steps ever having been taken by the respondents to recruit black applicants in particular. T-349 to T-350. There is no formal structure within the department for appeals from any selection or promotion decisions. T-355, 356. The ordinance governs how many men may be in the department (fire 89, police 105) and is silent as to how many men may be in each officer rank category;⁸ the latter decisions are in the Commissioner's discretion. T-356 to T-359. From about November 1963 to 1973, 30 men were appointed to the fire division, he said. (T-362.) and 62 to the police division.

4. Testimony of Gordon W. Scanlon

Scanlon, presently deputy chief of police has been a police officer for 28 years. T-367. Dr. Glascock had suggested to him that he go to Montclair State College and McLaughlin agreed, and in late December, 1972, he saw Dr. John Seymour, chairman of the College Psychology Department, who gave him the new examination for the department. T-369 to T-372. He told Dr. Seymour that the department wanted a non-discriminatory test. T-383, 384. He had no personal information as to whether or not the new examinations were discriminatory. T-384 to T-385. He stated that job descriptions are found in Exhibit HE-1, the new rules and regulations relating to promotion. T-372. Those were the first amendments to the rules of 1950. T-373 to 380.

⁸ The revised ordinances appear to restrict the personnel of the police division to only one chief and two deputy chiefs (see sec. 13-6); and in the fire division, to one chief (see sec. 11-8).

III. Discussion and Application of the Law Against Discrimination to These Proceedings

A. THE WRITTEN EXAMINATIONS FOR HIRING AND PROMOTION

All parties concede that the pivotal issue in this case is whether or not the burden of coming forward with evidence shifted to the respondents at any time in the proceedings. The respondents state at page 10 of their post-hearing brief that the evidence submitted by the complainants was that "blacks did not score as well as whites on the test" given on November 6, 1971, and that no evidence was produced by the complainants as to why that was the case. The respondents argued that they were not required to come forward with any evidence justifying the test but that instead the complainants were obligated to produce expert testimony showing that the tests were invalid. The deputy attorney general, on the other hand, stated repeatedly throughout the hearing that he had made a conscious decision not to call an expert witness until the respondents made "some colorable attempt" to show the job relatedness of the examination. As a result of their respective legal positions, the complainants produced only evidence as to how the entry level and promotional examinations had disadvantaged minority applicants, and the respondents did not make any significant attempt to factually justify the tests. The evidence as to the way in which the respondents' hiring and promotion systems were organized and the way in which they had affected the applications of persons of all races, was entirely in agreement and could almost have been stipulated. The Hearing Examiner must, therefore, proceed to make findings of fact and conclusions of law from the uncontroverted evidence described supra.

Numerous recent cases involving alleged discrimination have dealt with the question as to the effect of statistics showing that minority groups have been disproportionately disadvantaged by any employer practice. Employers are barred under the Law Against Discrimination from refusing to hire or employ, from barring from employment or from discriminating against any individual in the terms, conditions or privileges of employment because of the race of said persons. N.J.S.A. 10:5-12(a). Additionally, the opportunity to obtain employment without discrimination is declared to be a civil right. N.J.S.A. 10:5-4. Numerous state and federal cases have held that discrimination is committed not only by men with evil motives, but also by those whose pattern of operation has a discriminatory impact on a particular class of people—a class which is recognizable by race. To prove that this discrimination exists, the courts have considered only objective criteria and the effect of respondents' practices on minority persons.

Most directly in point is the recent case of *Blair v. the Mayor and Council, Borough of Freehold, et al.*, 117 N.J. Super. 415 (App. Div. 1971), certif. den. 60 N.J. 194 (1972). The respondents therein had been found guilty of discrimination as an "employer" by the Division based on the nature of their membership and admissions procedures for entry into the volunteer fire department. One of the Borough's arguments on appeal was that it could not be found to have violated the Law Against Discrimination in the absence of a showing of illegal intent. The court was unconvinced by that argument and upheld the Director's finding of discrimination on the ground that "the admission procedures established under the various borough ordinances, including the latest, constitute an unlawful employment practice because of the establishment of requirements irrelevant to the proper performance of the duties of firemen." *Id.* at 417. Despite the court's conclusion that "no overt act of discrimination was established at the hearing," (*Id.* at 417) it struck down the employment practices on the ground that "we cannot conceive of any lawful reason for the requirement of a vote of the membership . . . for admission of a new member thereto. The only rational reason for such a requirement is exclusion. * * * motivated at least in part by race" (*Id.* at 417).

The federal courts have come to the same conclusion in interpreting section 703(a) (1) of Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C.A. 2000e-2(a)—the provisions of which are virtually identical to those of the Law Against Discrimination. In *United States v. Sheet Metal Workers International Association*, 416 F.2d 123 at 131 (8th Cir. 1969); and *Dobbins v. Local 212*, 292 F. Supp. 413 at 448 (S.D. Ohio 1968), for example, the federal courts found that the defendants' practices, while racially non-discriminatory, had a discriminatory effect in that they carried forward the incidents of past discrimination into the present. A clear expression, this policy appears in a case dealing with Seniority Rights and Title VII, *Local 189, Papermakers and Paperworkers v.*

United States, 416 F.2d 980 (5th Cir. 1969), cert. den. 397 U.S. 919 wherein the court stated: (at pg. 996)

"Section 707(a) allows the Attorney General to enforce the Act only where there is a 'pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter' and where the pattern or practice 'is intended to deny the full exercise of the rights herein described.' Defendants contend that no such condition existed here. The same point arose in *Dobbins*. The court rejected it. * * * In reviewing statutes, rules or conduct which result in the effective denial of equal rights to Negroes or other minority groups, intention can be inferred from the operation and effect of the statute or rule or from the conduct itself. The conduct of defendant in the present case 'by its very nature' contains the implications of the required intent. *Local 357, Intern. Broth. of Teamsters, etc. v. National Labor Relations Board*, 365 U.S. 667 at 675, 81 S. Ct. 835, 6 L. Ed. 2d 11 (1961), citing *Radio Officers' Union, etc. v. National Labor Relations Board*, 347 U.S. 17, 45, 74 S. Ct. 323, 98 L. Ed. 455 (1954). . . . Thus, the Attorney General has a cause of action when the conduct of a labor organization in relation to Negroes or other minority groups has the effect of creating and preserving employment opportunities for whites only. Section 707(a) of the Civil Rights Act of 1964. Here, as in *Dobbins*, the conduct engaged in had racially-determined effects. The requisite intent may be inferred from the fact that the defendants persisted in the conduct after its racial implications had become known to them. Section 707(a) demands no more." *Id.*⁶ See also, e.g., *Quarles v. Philip Morris, Inc.*, 279 F. Supp. 505, at 516 (E.D. Va. 1968); *United States v. Bethlehem Steel Corp.*, 312 F. Supp. 977, 983 (W.D.N.Y. 1970), mod. 46 F. 2 632, 658-659 (2nd Cir. 1971).

The courts have repeatedly said that in cases involving racial discrimination charges, "statistics often tell much and courts listen." *Alabama v. United States*, 304 F. 2d 583, 586 (5th Cir. aff'd per curiam 371 U.S. 37 (1962)). Again in *Jones v. Lee Way Motor Freight, Inc.* 431 F. 2d 245, 247 (10th Cir. 1970), cert. denied. 401 U.S. 954 (1971), the Court said:

"In racial discrimination cases, statistics often demonstrate more than the testimony of many witnesses, and they should be given proper effect by the courts."

See also *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 1825-26 (1973).

These principles apply both where general under-representation of, and hence discrimination against, a protected class is alleged, and where a specific employment practice is at issue. An example of the former is *United States v. Hayes International Corp.* 456 F. 2d 112 (5th Cir. 1972), an action brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000e, et seq., the operative provisions of which are much like N.J.S.A. 10:5-12(a). The evidence showed that the defendant had many times as many whites as blacks in official and technical positions and had overall a minuscule percentage of black employees. The black population of the local area was 30 percent. The court, reversing the lower court, said:

"These lopsided ratios are not conclusive proof of past or present discriminatory hiring practices; however, they do present a *prima facie* case. The onus of going forward with the evidence and the burden of persuasion is thus on Hayes." *Id.* at 120.

The court continued: "The inference [of discriminatory hiring practices] arises from the statistics themselves and no other evidence is required to support the inference. At this stage of the proceedings, it was not necessary for the Attorney General to show the availability of skilled Negroes in the community to perform the jobs in question because the burden of going forward and showing the lack of qualified Negroes was upon Hayes." *Id.* (Emphasis added)

In *Parkham v. Southeastern Bell Tel. Co.*, 433 F.2d 421 (8th Cir. 1970), the statistics showed a low percentage of black employees, except in menial jobs. The court ruled: "We hold as a matter of law that these statistics . . . established a violation of Title VII of the Civil Rights Act of 1964." *Id.* at 426. To similar effect, see *Bing v. Roadway Express, Inc.*, 444 F.2d 687, 689 (5th Cir. 1970); *United States v. Ironworkers Local 86*, 443 F.2d 544, 551 (9th Cir. 1971).

⁶ It is unimportant whether one speaks in terms of proving the discriminatory effect of conduct, or of creating a presumption of intentional discrimination upon the submission of a *prima facie* case. The courts speak both ways. Compare *Gaston County v. United States*, 395 U.S. 285, 89 S. Ct. 1720 (1969); *Griffin v. Illinois*, 351 U.S. 12 (1956); *Hobson v. Hansen*, 269 F. Supp. 401 (D.C.D.C. 1965), with *United States v. Jefferson County Board of Education*, 372 F. 2d 836, 887-888, (5th Cir. 1966). In either situation, the theory leads to a finding of discrimination unless respondents submit very substantial justifications for the continuation of the pattern and practices.

The latter reasoning recently culminated in the landmark case of *Griggs v. Duke Power Co.*, 401 U.S. 424, 91 S. Ct. 849 (1971), wherein the United States Supreme Court gave great weight to the purpose behind the statute which "was to achieve equality of employment opportunities and to remove barriers that formerly operated to favor white employees." (Id. 430) The court held: (at Id. 430, 431, 432)

"... Under the Act, practices, procedures or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices. . . . What is required by Congress is the removal of artificial, arbitrary and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification. . . . Congress has now required that the posture of the job seeker be taken into account. . . . The Act proscribes not overt discrimination but also practices that are fair in form, but discriminatory in operation. . . . [G]ood intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability. . . . [C]ongress directed the thrust of the Act to the consequences of employment practices, not simply the motivation." *Id.* (Emphasis added)

The *Griggs* case also clearly established the sole standard under which an employer may justify practices which have a discriminatory effect. The employer has the "burden of showing," according to the Supreme Court, "that any given requirement has a manifest relationship to the employment in question." (Id. 432) "The touchstone is business necessity." *Id.* 431 It is not enough that the practice is "useful" or even that there is a business purpose or reason for it. There must be an overriding, legitimate business purpose which is necessary and essential for the safe and efficient operation of the business. *Local 189, United Papermakers and Paperworkers v. United States*, *supra* at 989; *Local 53 v. Volger*, 407 F. 2d 1047 (5th Cir. 1969); *Robinson v. Lorillard Corporation*, 444 F.2d 791, 796-798 (4th Cir. 1971).

The New Jersey Supreme Court has addressed itself to the definition of a *prima facie* case in *Jackson v. Concord Company*, 54 N.J. 113 at 119 (1969). The court therein stated:

"Although the burden of persuasion by a preponderance of the evidence rests with the complainant throughout, when such [dilatatory or evasive] conduct appears, a strong case is made out, and a respondent has a heavy task to justify his actions. The effort of these respondents was indeed feeble and utterly unconvincing." *Id.* at 119.

See also *Booker v. Board of Education*, 45 N.J. 161 (1965); *Hobson v. Hansen*, 269 F. Supp. 401, 429, (D.D.C. 1967); *Morean v. Board of Education of Montclair*, 42 N.J. 237, 240 (1965).¹

The Equal Employment Opportunity Commission, the administrative agency vested with power to enforce Title VII, has promulgated certain "Guidelines on Employee Selection Procedures," 29 C.F.R. § 1607 (1970). Noting that "in many instances persons are using tests as the basis for employment decisions without evidence that they are valid predictors of employee job performance" and that such tests often "[yield] lower scores for classes protected by Title VII," the Commission determined quasi-legislatively that: "any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by Title VII, constitutes discrimination unless: (a) the test has been validated and evidences a high degree of utility as hereinafter described, and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavoidable for his use." 29 C.F.R. § 1607.3.

The evidence of the test's validity should consist of "empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job. . . ." *Id.* at § 1607.4(c). The empirical evidence of validity must be based on studies employing generally accepted procedures for determining criterion-related validity, such as described in "Standards for Educational and Psychological Tests Manual" and must be accompanied by sufficient evidence from job analysis to show the relevance of the content. *Id.* at § 1607.5(a). The results of the validation study must also include graphical and statistical representations of the relationships

¹ The principles discussed above at pages 19 et seq. have sometimes been referred to as the "effect test" for measuring whether or not discrimination exists. The standard is now well established and has been often applied to allegedly discriminatory employment examinations.

between the test and the criteria, together with average scores for all tests and criteria reported for all relevant subgroups. *Id.* at § 1607.6. Subsequent sections define acceptable modes of validation.

In *Griggs v. Duke Power Co.*, *supra.*, the court found these regulations to be wholly consistent with the legislative purpose behind the enactment of Title VII and held that the statute forbids the use of any tests or standards "unless they are demonstrably a reasonable measure of job performance." (401 U.S. at 436). It also stated that "Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question." (401 U.S. at 432). In that case, one of the tests at issue and held invalid was the Wonderlic, which the court, in language applicable to the present case, held was adopted "without meaningful study of [its] relationship to job-performance ability," (Id. 431) but rather "on the company's judgment that [it] generally would improve the overall quality of the work force." (Id. 431). The court pointed out (401 U.S. at 433) that it was not dissuaded by the provision in Title VII, Section 703(h) authorizing "any professionally developed ability test" that is not "designed, intended or used to discriminate because of race . . ." The Law Against Discrimination contains no such exception for any type of testing.

The court in *Griggs* found that whites had fared better on the tests than blacks and that that such "consequence would appear to be directly traceable to race." (Id. 430) In making that finding, the court, in footnote 6, referred to several E.E.O.C. decisions which concluded that the two tests in question, one of which was the Wonderlic test, resulted in fewer high test results for blacks than for whites. Decision of E.E.O.C., C.C.H. Empl. Prac. Guide, ¶17,304.53 (Dec. 2, 1966); Decision of E.E.O.C. 70-552, C.C.H. Empl. Prac. Guide, ¶6139 (February 19, 1970). The latter case cites several studies in support of its general finding on test results from the Wonderlic and Bennett tests in question. (See "Race, Employment, Tests and Equal Opportunity," *Industrial Management*, March, 1966; Barrett, "Gray Areas in Black and White Testing," *Harv. Bus. Rev.*, January-February, 1968, p. 92; note "Legal Implications of the Use of Standardized Ability Tests in Employment and Education," 68 *Colum. L. Rev.*, p. 692-744, (1968).

It has already been pointed out *supra* that the courts have held that a convincing statistical demonstration of discrimination shifts the burden of justifying the employment practices which cause the discriminatory effect. This is, in fact, particularly appropriate where formal tests are at issue. The matter was considered with some explicitness in *Chance v. Board of Examiners*, 458 F. 2d 1167 (2nd Cir. 1972). The evidence showed that whites passed a certain test for promotion to supervisory positions with New York City schools at a rate one-and-a-half times that of blacks and Puerto Ricans and that the City had fewer minority supervisors than other large cities. The court held that the burden of proving the test to be job-related shifted squarely to the respondents (the respondents did, in fact, present expert testimony, after which the plaintiffs presented their own expert testimony). The court reasoned:

"We further believe that once a *prima facie* case of discrimination was made, it was appropriate **** to shift to the Board a heavy burden of justifying its contested examinations by at least demonstrating that they were job related. First, since the Board is specifically charged with the responsibility of designing these examinations, it certainly is in the better position to demonstrate their validity. . . . Second, once discrimination has been found, it would be anomalous at best if a public employer could stand back and require racial minorities to prove that its employment tests were inadequate at a time when this nation is demanding that private employers in the same situation come forward and affirmatively demonstrate the validity of such tests. *Id.* at 1176." (Citations omitted)

See also *Western Addition Community Organization v. Alloto*, 340 F. Supp. 1351 (N.D. Cal. 1972), wherein the court stated: "[W]here the hiring practice of a public agency (even though the agency does not intend to discriminate against minority groups) actually produces a situation in which the percentage of minority group persons employed is grossly and disproportionately less than the percentage of minority group persons in the general population, such effect alone **** does render the method of selection sufficiently suspect to make a *prima facie* case of unconstitutionality and shifts to the public agency the burden of justifying the use of generalized hiring tests by demonstrating that there is a reasonably necessary connection between the qualities tested in the examination and the actual requirements of the job to be performed." *Id.* at 1352.

In *Castro v. Beecher*, 334 F.Supp. 930 (D.Mass.1971), the court noted that 65 percent of the whites passed a certain entrance test, as opposed to 25 percent of blacks and 10 percent of Spanish-surnamed persons. On appeal, 495 F. 2d 725 (9th Cir.1972) the appellate court observed:

"In the absence of a satisfactory justification, the district court found that the examinations given from 1968 through 1970 were not 'significantly related to the capacity of applicants to be trained for or to perform a policeman's job.' The court noted the absence of validation studies relating the examinations to the policeman's job, a comment fully consistent with our own view of the justification made necessary by the *prima facie* showing." 459 F. 2d at 735-36.

See also *Gregory v. Litton Systems, Inc.*, 316 F.Supp. 401 (C.D.Cal. 1970), modified, 472 F.2d 631 (9th Cir. 1972); *Arrington v. Mass. Bay Transp. Authority*, 306 F. Supp. 1355, 1358 (D.Mass. 1969); *Pennsylvania v. O'Neill*, 348 F. Supp. 1084, 1103 (E.D.Pa. 1972), modified, 473 F. 2d 1029 (3rd Cir. 1973); and *Carter v. Gallagher*, 452 F. 2d 315, 326 (8th Cir. 1972).

The public policy behind the Law Against Discrimination is at least as strong as that of Title VII and is to be accorded a liberal construction. See, e.g., *Jackson v. Concord Co.*, *supra*; *Passaic Daily News v. Blair*, 63 N.J. 474 (1973); and *N.J. Builders, Owners and Managers Association v. Blair*, 60 N.J. 330, 335 (1972). It cannot be seriously argued that the same standards adopted in the cases discussed above are not to be applied in the instant case. The evidence must therefore be reviewed in light of the notion that if the examinations administered by the respondents have a discriminatory impact on minorities, then they are violative of the Law Against Discrimination unless evidence submitted by the respondents is found to have established the job relatedness and necessity for the examinations.

The uncontroverted evidence as to the operation of the examinations administered by the respondents to both initial applicants and candidates for promotion in the Police and Fire Divisions shows that the tests disproportionately disadvantaged the black men who were tested. As can be easily calculated from the numerical test results discussed in detail *supra*, 67 percent of the whites who took the entrance level examination passed it, while only 16 percent of the blacks who took that examination received a passing score. Thus, whites passed the entrance level examination at more than four times the rate of blacks. In very large measure, because of the exam (failure of which precluded a new applicant from any further consideration), 36 percent of the white applicants and 6 percent of the black applicants (or one-sixth as many as the whites) were approved for hiring.

The promotional examination operated in a similar manner. Forty-five percent of the whites applying for promotion to sergeant were successful on the examination while none of the blacks were. None of the blacks were promoted to any position while promotions went to whites applying for sergeant at the rate of 17 percent of them, for lieutenant at the rate of 83 percent and to captain at the rate of 100 percent. Thus, 32 percent of the whites applying for promotions in all categories were appointed while none of the blacks were.

Therefore, while whites did fail the test, their rate of failure was significantly lower than that of the blacks taking the respective tests, and it must be said that blacks fared significantly worse than did their white counterparts. This disproportionately higher failure rate of the minority applicants becomes more significant when we observe that black representation in both the Police and Fire Divisions is lower than that of the black population of the area. As of June 1, 1972, 14 percent of the men in the entire Police Division were black, none of the deputy chiefs or the chief were black, 12.5 percent of the captains were black, 16.7 percent of the lieutenants were black and 14.3 percent of the sergeants were black. At the same time, the Fire Division consisted of a total of 3.4 percent blacks. Yet the black population of Montclair was 27.2 percent (or 1.8 times the percentage of blacks in the Police Division and 9 times the percentage of blacks in the Fire Division) and the black population of Essex County was 30 percent.

This is not to say that any "racial imbalance" in the Department would constitute a showing of discrimination. But when the under-representation of blacks in the Department is taken together with the administration of invalidated tests which have been demonstrated to have a disproportionately negative effect on blacks, then a *prima facie* showing of discrimination has been made out and burden shifts to the respondents to come forward with evidence showing the job relatedness of the test. Failing such a showing by the respondents, a finding of discrimination would have to be made. To do otherwise would be to sanction

the use of tests which have no proven use other than the statistically higher exclusion of minority applicants.

The respondents did not offer any significant evidence to factually establish the job relatedness of the examinations. Quite the contrary, the respondents have contended throughout that they are not required to come forward with any evidence until after the complainants have affirmatively demonstrated the invalidity of the tests. Several respondent witnesses testified that none of the exams had ever been validated in any fashion. In fact, there is reason to believe that even the respondents have not been overly impressed with the exams. The present commissioner testified that the exams have since been discontinued because it "wasn't necessarily a fair test."⁸

According to Cappadona, Dr. Glasscock testified that there was no correlation between exam results and his recommendations as an Examining Board member. It is uncontroverted that the Wonderlic test, used for initial appointments, does not contain questions which directly concern police or fire work, and that the promotional exam was drawn up by Director Pettingill who drew his questions from suggestions of subordinates, the Essex County Police and prior police academy exams. The examinations are not graded by any professionals. The tests are utilized somewhat haphazardly as evidenced by the fact that the California Psychological Inventory was simply administered but was not utilized in any way. It cannot be said that the respondents have demonstrated in any way that the Wonderlic and the promotional examinations are necessary for successful job performance or that there is any correlation between one's efficacy as a police or fireman and high grades on the exams. To the contrary, 41 of the present firemen were appointed prior to the commencement of testing in November, 1952, and there is no evidence that those individuals are performing inadequately because they were not subjected to the tests in question; and the chief and deputy chiefs are not required to take the promotional examination. Given the prima facie showing that the exams had the effect of discriminating against blacks, the Hearing Examiner cannot *sua sponte* and without supporting evidence negate each of the possible nondiscriminatory explanations for the discriminatory results, and he must, therefore, conclude that the administration of the tests in question in the context of this case was violative of the Law Against Discrimination.⁹

B. THE INTERVIEW AND SELECTION PROCESSES

Recent cases have spoken to the legality of procedures such as those which the complainants contend are similar to the selection procedures utilized by the respondents in hiring new firemen and policemen and in promoting present officers.

In *Rouse v. General Motors Corp.*, 457 F.2d 348 (5th Cir. 1972), the evidence showed that a lower percentage of black candidates for promotion were promoted than of white candidates. The recommendation of the employee's foreman was of pivotal importance and almost all of the foremen were white. Based on these facts, the court held this promotional system to be violative of Title VII and stated that among its defective aspects were the following:

(i) The foreman's recommendation is the indispensable single most important factor in the promotion process.

(ii) Foremen are given no written instructions pertaining to the qualifications necessary for promotion. (They are given nothing in writing telling them what to look for in making their recommendations.)

⁸ No evidence was presented by any party as to the nature or operation of the examination presently utilized by the respondents and, therefore, it is impossible for the Hearing Examiner to arrive at any conclusions regarding it, although it can be said that the new test has not been professionally validated. However, in determining how the final ordering herein will address itself to the new *status quo*, the director should take into account how the prior examinations in issue herein have disadvantaged minority applicants and how the effect of prior discrimination has influenced the present.

⁹ Respondents contend that there were not sufficient openings for the complainant to have been appointed to the Fire Division even if he had passed the Wonderlic test. However, they state at page 8 of their brief that the test was given "to recruit applicants for both the police and fire departments." Because the complainant failed the test, he was rejected and denied an opportunity to be interviewed and considered for a position. Obviously the town conducted the test to have a waiting list of qualified applicants to fill future vacancies. Thus, the respondents violated the statute by denying the complainant the "opportunity to obtain employment on nondiscriminatory terms." See N.J.S.A. 10: 5-4. Even if the complainant Lige had not had standing to challenge the testing, the director did in his parallel complaints. See N.J.S.A. 10: 5-13; *Blair v. Mayor and Council, Borough of Freehold, supra*.

(iii) Those standards which were determined to be controlling are vague and subjective.

(v) There are no safeguards in the procedure designed to avert discriminatory practices. *Id.* at 358-59.

In *Hester v. Southern Railway Co.*, 349 F.Supp. 812 (N.D.Ga. 1972), the Title VII complaint charged discrimination in hiring for the position of data typist. The hiring process consisted mainly of a battery of tests and an interview by one Melton. Whites cleared the entire hiring process at a rate three times that of blacks. The court noted that those applicants given negative evaluations by Melton were not hired, while 95 percent of those he recommended were employed. The court stated that the purpose of the interview, according to Melton: "was to gather information about the applicant's background, family situation, access to transportation, work habits and personality. . . . It does not appear from the evidence that Melton had any written or formal guidelines from defendant as to how to score the interview and the court deduces that this stage of the hiring process was entirely subjective." *Id.* at 815.¹⁰

Thus, since Melton "was given no formal guidelines, standards, or instructions by defendant, and there were no safeguards to avert discriminatory practices" (*Id.* at 818), the use of this interview system was enjoined.

Citing similar considerations, including the fact that in the promotional system at issue, supervisors were given no written instructions or guidelines as to the standards to be used in evaluating their subordinates for promotion and that therefore "the supervisor's subjective evaluation of the employee's ability is an important factor in his advancement and an individual supervisor could, if he were so inclined, exercise racial discrimination in his selection of candidates for promotion," the court in *Baxter v. Savannah Sugar Refining Corp.*, 350 F.Supp. 139, 145 (S.D.Ga. 1972), issued a comparable judgment.

As is set out in greater detail in the Summary of the Evidence, *supra*, those applicants for entry level positions in the respondent department appear before the Examining Board for an oral interview only if they pass the written examination. The Examining Board consists of five citizens who are selected by the Commission of Public Safety. They conduct a 15 or 20 minute interview of the applicants, with the director, police chief and fire chief present. The Board receives no instructions as to how to question or evaluate applicants. The Board then makes recommendations to the director who in turn makes the final decisions. Ten minutes before the interviews, the Board receives the examination scores. All of the recommendations of the Board are unanimous. Glasscock told Cappadona that there was no correlation between his recommendations and the test scores. He stated that he asked those questions of applicants which seemed relevant. Fellow Board member Shepherd told Cappadona that "personality" was an important factor in evaluating applicants. Rogers told Cappadona that the questions during the oral interview were aimed at ability, attitude, nervousness and prior attitude. Glasscock told Cappadona that the Board looked for leadership, ability, initiative and good judgment. Shepherd told Cappadona that the Board asked applicants about education, interest in the job and "any question that comes to the questioner's mind."

The same selection process was utilized with regard to promotions. However, in addition, the Board had before it evaluation scores on job performance which had been given by the applicants' prior supervisors. The applicants were evaluated by the supervisors on their shifts, which would vary for each applicant. Supervisors were given no instructions as to how to do the evaluation. The averaged evaluation scores of the various supervisors were then given to the Board. The factors measured on the evaluation reports were reliability, cooperativeness, job performance, physical condition, potential adaptability, conduct initiative, dress, application, job knowledge, public relations, volume of work, report writing, equipment care and operation, accuracy, ability to follow directions and leadership. Also taken into account was the employee's "public relations" value, i.e., how he presented himself to the public. Different members of the Board assigned different weights to the various factors (i.e., exam, interview, evaluation score) in arriving at their recommendations. No procedure existed to appeal the recommendations of the Board or the decisions of the director. There was no written

¹⁰ The Court also noted that the tests were not professionally validated.

standard to guide the director in his selection, and the number of men to occupy each rank was set by the director in his discretion (subject to budget appropriations).

The respondents emphasize in their brief that the only evidence presented as to the result of the oral interviews and the discretionary selection by the director was that one black had been interviewed for an entry level position and that he had been appointed. However, in addition, it should be noted that two other blacks were interviewed, as shown in Exhibit C-20, for captain and lieutenant and that neither of them had been appointed to higher ranks out of 9 black applicants for promotion. At the same time, however, 21 whites were interviewed for promotion and 12 of them were appointed to higher rank. Thus, it is correct to observe that only three blacks went through the interview procedure, but this was the case because no other blacks had successfully passed the examination and successfully progressed as far in the selection process as the oral interview. In fact, as discussed in III. A *supra*, the blacks had fared proportionately badly on the examination because of the discriminatory operation of these tests. And the total number of initial appointments and promotions for blacks were significantly below that for whites on a percentage basis, as discussed above. The interview and director selection practices must be examined in the light of this overall discriminatory impact of the entire selection process. Moreover, the process itself can be examined to determine whether or not it is discriminatory on its face. As the Appellate Division stated in upholding the Division's finding of the illegality of the Freehold Volunteer Fire Department's membership and admission procedures: (*Blair v. Mayor and Council of Borough of Freehold, supra.* (117 N.J. Super. at 417) :

"Our reading of the record satisfies us that no overt act of discrimination with respect to either Jews or blacks was established at the hearing below. This in itself does not establish the lack of discrimination. . . . It is our conclusion that the admission procedures established under the various borough ordinances, including the latest, constitute an unlawful employment practice because of the establishment of requirements irrelevant to the proper performance of the duties of firemen. We cannot conceive of any lawful reason for the requirement of a vote of the membership of a volunteer fire department for admission of a new member thereto. The only rational reason for such a requirement is exclusion. . . ." *Id.* at 117 N.J. Super. 417.

In the context of the showing in this case of the discriminatory effect upon blacks of the overall selection process (as evidenced by their disproportionately poor showing in obtaining promotion and hiring), the excessive subjectivity and vagueness involved in the oral interview and in some aspects of the selection process, renders those procedures violative of the Law Against Discrimination. In *initial hiring*, the Examining Board's total lack of instructions as to the standards by which they must question and evaluate interviewees, renders their deliberations highly subjective. That subjectivity is aggravated by the fact that none of the Board members are fire or police professionals. It allows each of the members to themselves formulate the weight which they will give to the various factors before them. The varying indices of "character" and "personality" which the different members employ in their evaluations defy precise definition. Consideration of factors such as "nervousness" and "attitude" invite abuse.

In *promotion*, these same procedures are repeated with the addition of written evaluations by superiors—which play a major role in the Board's recommendations. Superior officers are given no standards as to how to make their evaluations of subordinates and those evaluations are made by varying numbers of superiors for each applicant for promotion. The aspects of performance to be measured by the supervisor evaluations are highly imprecise and subjective in nature. And the scores of various numbers of superiors were "averaged" before they were given to the Examining Board. Thus, if an applicant for promotion had received high evaluative scores from all but one of his supervisors, the score given him by the one dissenting supervisor could significantly lower his "averaged" total evaluation score to well below that of another applicant, or could present to the Board an inaccurate or incomplete picture of the opinions of the superiors. An overwhelming majority of the evaluating officers were white and six of the seven black candidates for promotion were evaluated solely by white superiors. Generally, as set out in detail, *supra*, the black candidates for promotion were ranked lower than white candidates on the evaluations. See Exhibit C-17.

By the same token, the director, in making his appointments and promotions, has no binding guidelines as to what factors he is to consider and what weights

he is to give them. He can, in fact, ignore the recommendations of the Board or even dissolve the Board. He also has the power to determine how many promotions should be made.¹¹ The only formal strictures imposed upon him (aside from budget appropriations) are that he cannot alter himself the total number of men in the department set by ordinance and by departmental regulation and that he must give some kind of examination. Thus, the director has a virtually untrammelled discretion in hiring and promotion.

The above-mentioned aspects of the selection process, when considered together with the statistics showing their discriminatory impact and the under-utilization of blacks in the department, provide no safeguards designed to avert discriminatory practices. In addition, the respondents have not come forward with sufficient proof to establish the necessity for these particular procedures or their correlation with job performance. It appears that these requirements are not relevant to the performance of the duties of firemen and policemen. They must, therefore, be found to be violative of the Law Against Discrimination.

IV. Recommended Findings of Fact and Conclusions of Law

Upon all the evidence including exhibits received in this hearing and after an opportunity to observe the demeanor of the witnesses, and in exercise of his authority, the Hearing Examiner, upon due consideration of all of the evidence and the law and the credibility and demeanor of the witnesses, hereby recommends the following findings of fact and conclusions of law.

1. The respondents, Mayor and Commissioners, Town of Montclair, and in particular the Commissioner of Public Safety, are ultimately responsible for the employment practices of the Montclair Department of Public Safety, are "employers" within the meaning of N.J.S.A. 10:5-5(e), and are subject to the provisions of the Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.*

2. The respondents on or about November 12, 1971, denied the complainant Charles Lige because of his race an equal opportunity to be approved for the Montclair Fire Division waiting list and for possible ultimate employment in said division by excluding him on the basis of his examination score on the Wonderlic test, which examination is, in the context of this case, discriminatory in violation of N.J.S.A. 10:5-4 and 5-12(a).

3. The respondents' utilization on or about November 6, 1971, of the Wonderlic examination for appointment to the Fire and Police Divisions of the Montclair Department of Public Safety had a disparate and unlawfully discriminatory effect on minority applicants and constitutes an unlawful employment practice in violation of N.J.S.A. 10:5-4 and 5-12(a).

4. The respondent's utilization on or about December 29, 1971, of their written promotional examination for promotion of members of the Fire and Police Divisions of the Montclair Department of Public Safety had a disparate and unlawfully discriminatory effect on minority applicants and constitutes an unlawful employment practice in violation of N.J.S.A. 10:5-4 and 5-12(a).

5. The respondents' utilization on or about November 6, 1971, of an entirely subjective oral interview by the Examining Board and the granting of absolute discretion to the director of the Montclair Department of Public Safety in his selection of applicants for initial appointments to the department, all without adequate standards to protect against discrimination and without relationship to proper job performance, constitutes an unlawful employment practice in violation of N.J.S.A. 10:5-4 and 5-12(a).

6. The respondents' (and in particular the Commissioner of Public Safety) utilization on or about December 29, 1971, of an entirely subjective oral interview by the Examining Board and of entirely subjective evaluation by supervisors and the granting of absolute discretion to the director of the Montclair Department of Public Safety in his promotion of officers in the department, all without adequate standards to protect against discrimination and without relationship to proper job performance, constitutes an unlawful employment practice in violation of N.J.S.A. 10:5-4 and 5-12(a).

7. As to relief, I find that no out-of-pocket or other damages have been claimed or proven.

8. It is further recommended that the Director of the Division on Civil Rights enter and serve an appropriate order pursuant to the provisions of N.J.S.A. 10:5-17 to effectuate the purposes of the Law Against Discrimination in the light of this report. Such an order could include a requirement that the respondents

¹¹ With certain exceptions noted in Footnote 3C *supra*.

cease and desist from the use of any examination which has not been properly professionally validated and from the use of supervisory evaluations, oral interviews and absolute discretion by the director of the department without effective standards and protections against racial discrimination. Such an order could also provide for the respondents to take appropriate affirmative action to minimize the possible future effects of practices which have in the past resulted in racial discrimination.

Respectfully submitted,

JULIUS WILDSTEIN,
Hearing Examiner.

Dated May 16, 1974.

Mr. EDWARDS. We want to move along as fast as we can. Mr. Drinan?

Mr. DRINAN. The witness is so valuable. Pursuant to our conversation before, do you have some suggestions that you would want to give for the record about H.R. 8329 introduced by me and others? I would welcome them and I think it would be valuable.

The nondiscrimination provision, section 122, and it goes on for several pages—I want to thank you and thank Ms. Turner for coming.

Mr. HIMMELMAN. Do you want me to respond to that briefly?

Mr. DRINAN. Briefly, if you would.

Mr. HIMMELMAN. There are two or three things that any amendment which retains enforcement authority in the Office of Revenue Sharing should contain. First, it should be clear not that the Governor of a State, but that local officials are responsible for securing enforcement.

The current law and regulations provide for the Governor to have oversight and the Governors generally just defer to the local officials. I suggest you amend the act to provide that local officials are responsible.

Second, it seems to me it has got to be very clear that any combination of an administrative finding or a court finding of discrimination is sufficient to trigger a temporary cessation of funds until the offending jurisdiction comes into compliance.

Finally I think it should be very clear that the Office of Revenue Sharing, because it holds the funds in its hands, must act in every case regardless of whether the Justice Department acts or not.

I very much disagree with the memorandum of understanding that has been reached between the Justice Department and the Office of Revenue Sharing which in effect says that if the one agency is operating, the other will not because there may be confusion.

Unless the funding agency, in this case ORS, is acting in every case and holding the remedy of a fund termination over the head of an offending jurisdiction, you lose the power of the revenue sharing civil rights mechanism. I think you should require that the Office of Revenue Sharing consider withholding funds in every case in which there is evidence of discrimination regardless of what another agency of the Government may be doing.

Mr. KLEE. Before we proceed to the next witness, I would like the record to show that section 122(b) of the statute incorporates title VI of the Civil Rights Act of 1964 and that 42 U.S.C. section 2000(d) (6) makes clear that 42 U.S.C. section 2000(d) (5)—which Mr. Himmelman referred to as section 605—is the elementary and secondary education section of the act of 1966 and not part of title VI of the Civil Rights Act of 1964.

Mr. EDWARDS. Do you want to comment on that?

Mr. HIMMELMAN. No. I would have to look at all those numbers.

Mr. EDWARDS. Thank you very much.

Our next witness is William R. Morris, director of housing programs, National Association for the Advancement of Colored People, and he is accompanied by William A. Vail, president of the New Bern, N.C., NAACP branch.

Mr. Morris is in charge of the NAACP general revenue sharing program and handles complaints from NAACP branches before the Office of Revenue Sharing.

Appearing with Mr. Morris is William A. Vail. We are most anxious to hear from Mr. Vail because he has firsthand knowledge of this area. His NAACP chapter has filed a civil rights case with the Office of Revenue Sharing—a case which I understand was officially closed by the office on May 20 of this year.

Mr. Morris, Mr. Vail, we welcome you both and we sincerely thank you both for traveling some distance to appear before us today. You may proceed.

TESTIMONY OF WILLIAM R. MORRIS, DIRECTOR OF HOUSING PROGRAMS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ACCOMPANIED BY WILLIAM A. VAIL, PRESIDENT OF THE NEW BERN, N.C., NAACP BRANCH

Mr. MORRIS. Thank you, Mr. Chairman.

Mr. EDWARDS. Without objection your full statement will be made a part of the record.

[The prepared statement of Mr. Morris follows:]

STATEMENT OF WILLIAM R. MORRIS, DIRECTOR OF HOUSING PROGRAMS FOR THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Unless major corrective surgery is quickly performed on this radical new Federal program of general revenue sharing, there is a strong likelihood that history will record its performance as a crippling influence on black progress toward racial equality and opportunity. Whether intended or not, this new federalism experiment is adversely affecting the manner and rate by which racial minorities are able to achieve equal status with the white majority in the political, social, economic and legal arenas of American life.

After nearly a decade of civil disorders in racial ghettos across the Nation, the Federal Government undertook a massive funding of social programs. It is appropriate that we pause now to thoughtfully review the impact of this change in Federal spending policy on black Americans.

How has the relaxation of Federal control over the expenditure of billions of dollars within a relatively short span of time affected the rights and opportunities of racial minorities? Can blacks look with any greater confidence to State and local governments to receive equal benefit from the services and facilities provided with revenue sharing funds? Does the black experience with this first in the series of "New Federalism" programs demonstrate a need for new and different strategies within the civil rights movement?

Contrasted to the civil rights laws enacted during the 1960's, the State and local fiscal assistance act became law of the land in October 1972, with little awareness or concern by most of the nation's 24 million black citizens.

Busily preoccupied with the "great society" programs spawned in the Lyndon B. Johnson era, blacks paid only scant attention to this revolutionary change in the way Uncle Sam returned public dollars to State and local governments—to do with largely as they pleased. This historic shift in government policy was bound to affect the lives and opportunities of most blacks in the country.

THE PROGRAM

Public Law 92-512, as general revenue sharing is officially known, was enacted after lengthy debate by the Congress. According to provisions of that act, approximately \$30.2 billion will be distributed to more than 38,000 units of State and local governments over a 5-year period. Except for a few restrictions, the recipient governments are free to use the money according to their individual needs. To administer the program, the Secretary of the Treasury established an office of revenue sharing and charged it with implementing the statute.

In the 3 years of its existence this program has developed a powerful block of supporters—from local officials who receive and spend the funds to political conservatives who seek to reawaken resurging ideologies of "States rights" and "local home rule"—code words for black oppression.

Although the program released no fresh money from Washington, as promised by President Nixon, the mayor's of troubled cities—including the black mayor's—jumped on the bandwagon to support renewal of the program when it expires in December, 1976.

Revenue sharing funds can be used for operating and maintenance or capital expenditures. States may use their funds without categorical restriction, but local units of government are limited to eight categories which are: Public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor or aged, and financial administration. All units of governments are required by the act to comply with Federal non-discrimination laws.

Since Congress felt that public views should be considered, all recipient governments must file two reports annually with the office of revenue sharing. One, the "planned use report" indicates the anticipated use of revenue sharing funds. The second, an "actual use report" is supposed to show how the funds were being spent. Both reports must be printed in the local press to inform the citizens. The information published for public consumption, however, is of little practical use to persons seeking to trace the actual uses of these funds.

A third of all funds go automatically to State governments, with minimal controls over their use. The other two-thirds is distributed among some 38,000 local governments to spend, as they decide, within the loosely defined categories.

PROBLEMS AHEAD

As time draws near for determining the future of general revenue sharing, it becomes essential that the nation's black leadership more fully assess the political, economic and social impact of the program on civil rights objectives. Up until now blacks have been neatly excluded from any practical involvement in the extensive research which has been conducted.

With the use of Federal funds, since the programs inception. Designed to measure the programs effectiveness, most studies have focused mostly on allocation formulas, the degree of public participation, and how funds are being spent. The National Science Foundation encouraged and funded a majority of these research efforts. Generally these projects have been conducted by researchers and academicians who appear to be concerned more with proving-out pet hypotheses and in establishing their own track-record, than in shedding some light on the historical problems of racial minorities and the poor.

One of the few restrictions written into the law requires non-discrimination in the spending and use of revenue sharing funds. It is the enforcement of these requirements which has generated universal criticism by civil rights organizations. Over the past year congressional leaders, influential newspapers and other institutions, have increasingly focused on the glaring weaknesses in civil rights enforcement by the office of revenue sharing.

In the fiscal year 1975 this office assigned only five professionals to full-time civil rights compliance duties—the largest staff assigned to this function since the program's beginning. A recent study by the Government's General Accounting Office recommended that the anti-discrimination laws be broadened to apply to all of the activities and programs of recipient governments, not just those directly receiving revenue sharing money.

In the spring of 1975 President Ford submitted his administration's program to Congress. It called for renewing the program for six more years, with a price tag of \$40 billion. As might be expected, only cosmetic changes in civil rights enforcement were sought.

With a national election due in 1976, now is the opportune time in which to exact commitments from presidential and congressional candidates. However,

this time around it could be a mistake for blacks to expect the white liberal establishment to take the lead in orchestrating the elimination of racial inequalities in revenue sharing, since the economy, inflation and energy problems loom as more pressing issues among the nation's electorate. Blacks therefore should begin to prepare themselves now to make revenue sharing a priority issue in the upcoming presidential elections.

The heart of the problem is both politics and race. It falls between the strength of the black vote and the climate of national racial opinion in which we should focus public attention—and thus our civil rights strategy. It appears to be timely that we consider a renewal of the coalition strategy, to reenforce the common concerns over deficiencies in civil rights with citizen involvement in revenue sharing. Such an approach could quickly swell the ranks of those working for social progress.

The comptroller general's report also pointed out that citizen involvement in most local government's budgetary processes did not change, but remained at the same low level which existed prior to revenue sharing.

WHO BENEFITS?

Using the style of statistical interpreters, we should take a moment to examine 1974 census data on the social and economic status of the black population, to obtain a better understanding of the critical need to establish national spending priorities in the use of revenue sharing funds. By all standards of human equity a fixed percentage of these funds should be earmarked to improve opportunities for America's blacks, whose rate of unemployment is currently double that of whites. Mandated expenditures are also required to help equalize the black family's median annual income of \$7,800 with the \$13,400 figure now earned by whites. There are 7.5 million blacks, over 30%, earning less than the government's poverty line of \$5,038 for a family of four; while 39.8 percent of all black youth remain without jobs. It comes as no surprise then that black households represent 40 percent of all food stamp recipients, or that mortality levels continue to remain higher for blacks than for whites; or that black inmates comprise 42 percent of local jail populations.

The analysis of spending patterns by State and local governments reveal that most of their revenue sharing expenditures fall into but a few categories. Fifty-nine percent of the total funds were expended in the 1975 fiscal year on education, public safety, and public transportation. Funds spent by cities were more concentrated, with nearly one and one-half billion dollars being spent in one year on public safety—sophisticated police weaponry and the like.

States allocated only six percent of their funds for social services for the poor or aged, while the cities expended a measly one percent of their funds for these purposes. Four percent of city funds was spent on assorted health services. Community development and housing for the poor accounted for an insignificant one percent of the combined expenditures by State and local governments.

Overall, State spending strongly supported racially-segregated education. Some two-thirds of the State's funds were used to subsidize operating and maintenance costs of schools. The priorities of city and county governments were focused more on law and order and the protection of property.

Regardless of type or size of recipient government, the opportunity to use funds to improve human and social needs of the poor was substantially ignored. The political wind is blowing toward those services which have traditionally been funded at the State and local level, rather than for the social and economic programs previously undertaken with categorical Federal grants.

It is reasonable to believe that governments which have discriminated in their employment and contracting in the past, will continue their practices with revenue sharing funds—unless Federal rules are vigorously applied. The law omits any requirement for funds to be spent to meet needs of the poor, or to correct the effects of past discrimination.

There is a widespread belief that elected officials spend their funds to grant favored treatment to political supporters, and on projects that benefit mainly the white middle-class for such things as boat marinas, tennis courts, football stadiums, tax reductions that benefit slum landlords (a majority of blacks rent their housing), and for municipal services to racially-exclusive new subdivisions.

Little is being done with revenue sharing funds to reduce the decay and deterioration of innercity neighborhoods or for community redevelopment to help the under-privileged improve the quality of their life and environment.

CIVIL RIGHTS ACTIVITIES NOTED

For the first time in our Nation's history, a single Federal agency, through the revenue sharing act, has civil rights enforcement authority within every State and local government's jurisdiction. The law vested power in the Secretary of the Treasury to bring drastic changes in long-standing discriminatory practices of State and local governments by providing the legal tools needed to halt funded programs that discriminate against blacks. The Secretary may also require offending governments to adopt affirmative action programs that correct for past discrimination, as a condition to continue receiving funds. We know, however, that acts of great political courage will be required to secure such laudable results.

The law made it easy for recipient governments to substitute revenue sharing funds for their own in specific programs and then to assign their own funds to operations more likely to be vulnerable to discrimination. This loophole has made it almost impossible for the untrained citizen to trace Federal money into projects which benefit from the transferring of funds.

Most complaints to date have involved smaller towns and counties where physical evidence of discrimination is relatively easy to verify. The lack of equal benefit from public facilities such as streets, sewers and recreation is frequently the object of complaints by blacks.

The law says no jobs, services or facilities provided with these funds may be denied anyone on the basis of race, color, national origin or sex. These requirements extend to all contractors, suppliers and quasi-governmental bodies who receive revenue sharing funds from a unit of government.

As of June, 1975, less than 150 complaints charging racial bias have been handled by the Office of Revenue Sharing. Of these only 18 had been resolved.

The national clearing house on revenue sharing which was established in November 1973, is a non-profit organization that serves as a non-governmental focal point for information about revenue sharing. A survey of States, announced by them in May, 1974, revealed that of 24 responding, not one State required their local governments to file statements of compliance with their State's civil rights regulations.

The biases of laws which create deprivations for minorities often lead to the mis-application or to violations of law. This results in a type of legal discrimination often encountered in local revenue sharing programs. Bias may be shown by public officials who practice partiality in applying the law without violating its letter. Deficiencies exist in providing minorities with information and other services of the sort usually offered by State and local governments.

The purchasing power of blacks has been seriously eroded in recent years due to inflationary pressures and economic recession. Economic discrimination may be defined as any activity or lack thereof which prevents minority group members from having the same opportunity as whites to earn a living or to receive equal material benefits. Since equal access to the economy provides greater opportunities for political power and social equality, this form of bias requires a much closer scrutiny than heretofore.

Another form of bias to be found in local communities is social discrimination. This has the greatest influence on the personality development of blacks. The tendency of persons of the majority group to regard persons of a minority group as inferior or dangerous manifests attitudes in obvious or subtle ways and is often reflected in spending decisions.

Like most other Americans, blacks initially failed to grasp the importance of revenue sharing in their every day life. Even today a majority of the Nation's population simply does not understand how it works or who it is expected to benefit. Minorities have yet to realize the many forms of racial discrimination that could be eliminated or greatly reduced through more skillful manipulation of the program's civil rights requirements.

Graham Watt, the Office of Revenue Sharing's first director, spoke to the school of public affairs at the University of Minnesota on November 14, 1973, only a few months after the first checks had been sent out. He enunciated the administration's line on what they wanted the public to believe about this program. He said, "We resist attempts to subvert the concept of general fiscal support by special interest groups eager to use the leverage inherent in general revenue sharing to achieve their own goals. . . . Citizen participation in government is being improved quantitatively and qualitatively. . . . In countless cities, counties and towns throughout the nation, public hearings, citizen advisory committees, community-wide information programs, citizen surveys and similar mechanisms are being applied to the revenue sharing decision-making".

In the classic exaggeration by Government bureaucrats he told his audience that "citizens and civil rights groups who need to do so may turn to us. The Office of Revenue Sharing and other agencies in the Federal Government are fully prepared, when necessary, to insure local and State compliance with the non-discrimination requirements of the law".

With substantially more experience to validate his views, Wayne Clark of the Southern Regional Council's revenue sharing monitoring project, wrote in a letter to the New York Times on August 24, 1975, "Revenue sharing has not only failed to encourage public participation, it had served as a barrier to community involvement. Discrimination against non-whites and women is widespread".

His criticism went on to say: "... local officials who violate anti-discrimination provisions of the law do so with impunity. Categorical programs that revenue sharing replaced have their own deficiencies. Nonetheless, they did place tax dollars in areas where the greatest need exists and provided an economic and political base for powerless groups. Revenue sharing has had the opposite effect. It has not only offered few opportunities for non-whites, women, or the poor to increase their influence on local governments, but has increased the economic and political power of traditional ruling circles". Mr. Clark urged the Congress to substantially alter the program or end it.

In a joint report released in August, 1975, four national organizations charged that revenue sharing funds are financing large-scale discrimination in State and local public employment and services. The National Urban Coalition, the League of Women Voters Education Fund, the Center for Community Change and the Center for National Policy Review, found patterns of job discrimination by public employers, including inferior pay to women and minorities.

Using figures compiled by the U.S. Equal Employment Opportunity Commission, the groups found that fire departments around the Nation were 95 percent white and male; police forces were 91 percent white. Blacks in State and local government jobs showed a median annual salary of \$7,361 compared to \$8,844 for whites.

The belief is widespread among civil rights groups that revenue sharing is being used to maintain public systems which discriminate in employment and provides greater benefits to well-to-do communities than it does to poorer areas.

COMMUNITY INVOLVEMENT AND ACTION

Soon after revenue sharing went into operation, the NAACP embarked upon a major program to inform and motivate its 1,700 branches and State conferences. It published comprehensive guidelines in April, 1973, describing methods for spotting discrimination in local revenue sharing expenditures. The handbook spelled out complaint procedures and strategies to help branches mobilize community interest and to press for equal benefits in the program.

This effort appeared to spark a new wave of interest among community leaders. It resulted in the largest volume of racial complaints filed by any one organization in the Nation. Elected officials in city after city soon found themselves confronted by residents seeking a greater voice in how the funds were spent. Blacks appeared at budget hearings to question their local officials. In some instances coalitions were formed to demand better services for the poor, and to insist upon affirmative action programs that compensated for past inequities in city jobs and services. Seemingly, the civil rights movement had found a new issue of major consequence to rally around.

Mobile, Alabama, was forced to establish formal communications with black leaders and to consult with them on proposed projects. Ninety years of black exclusion in the volunteer fire department of Dover, Delaware, was ended when the local NAACP filed a complaint opposing the allocation of revenue sharing funds to the fire department. Two blacks now serve as firemen for the first time in the history of Delaware's capital city.

A historic precedent for cities was established in Peoria, Illinois, when, as a result of pressure from the NAACP branch, the city executed an agreement to increase black employment in the city's work force to 15 percent over a two-year period. The Justice Department's Community Relations Service helped to negotiate the document. Lorain, Ohio, became the second city to adopt such an agreement, following demands from a coalition of community groups.

Auburn, Alabama's mayor was forced to stop a private white academy from using the town's football stadium after the NAACP filed a complaint when it discovered that paint used to redecorate the locker rooms was purchased with revenue sharing money.

A county jail was desegregated and black deputies hired for the first time in New Bern, North Carolina, and a long-delayed and needed park improvement in the black part of the town resulted from a complaint filed by the branch president despite intimidation from city officials.

These cases are cited to illustrate how organized community action, when focused on the revenue sharing program, might serve to accelerate black progress toward racial equality. Were the Federal Government strongly committed to guaranteeing that discrimination does not occur in this program, the predictable result could be of major consequence to the achievement of full rights for blacks in all facets of American society.

WAYS OF HOPE?

The capacity of the private sector to collect information and monitor local experiences with revenue sharing is severely hampered by the lack of funds. Therefore, considering the length of time the program has been in operation, little information exists beyond government financed research to make an impartial determination of how productive local programs have been in advancing racial equality.

Nevertheless, scattered instances are now coming to public attention which provide a measure of encouragement to those who believe the shift from categorical grant funding is not all bad. Some examples are described below to plant the seed of possibilities which could exist in the revenue sharing program and, if pursued on a larger and coordinated scale by all units of government, could, in the near future, become an important factor in achieving the Nation's social objectives.

The city of Wichita, Kansas, has instituted an equal opportunity/affirmative action program to prevent the possibility of purchasing goods or services from city vendors who discriminate.

In Chicago, revenue sharing payments amounting to \$19.2 million each quarter were halted, by a Federal court order, because of discriminatory personnel practices in the city's police department. Rather than lose its funds, the city's powerful mayor accepted a plan to employ and promote black policemen.

Lake County, Indiana, which surrounds the predominantly black city of Gary, was ordered to carry out an affirmative program to hire 30 percent minority contractors on a \$5 million juvenile detention center, and to remove bonding limitations which prevented them from bidding on the project.

The State of Michigan placed its allocation of over \$200 million in its teachers retirement fund. Since the fund benefited a segregated school system in Ferndale, a suburb of Detroit, the State faces a cut-off of all its funds unless the offending school system changes its practices.

The Justice Department obtained a consent decree requiring Tallahassee, Florida, to adopt a goal of hiring qualified blacks for every type of city job in proportion to the number of blacks in the city's civilian labor force.

On their own initiative some governments are expending funds to attack poor housing. Chapel Hill, North Carolina, and Seattle, Washington, established housing trust funds to rehabilitate housing and to back-up loans for low-income people.

The State of Utah appropriated \$4 million to provide \$4,000 grants for owners who repair and rent their homes to the poor for at least five years.

Dallas, Texas, and Orange County, California, funded fair housing operations with their money. In Eugene, Oregon, and Colorado Springs Colorado, funds were budgeted to pay rent supplements to elderly and poor citizens.

Recognizing there is the need for some self-examination by a broad cross-section of black leadership, a call for action needs to be sounded without further delay. So far too little attention is being paid to whatever untapped potential the General Revenue Sharing program possesses to bring about a sweeping change in the racist practices of our society as they relate to the sensitive issues of school segregation, housing integration and parity in employment.

Recent census data confirm that the seventies is well on its way to becoming a decade of racial retrogression. Sharply reduced earnings by blacks, brought on by the economic squeeze, and accompanied by the general reduction in Government funds to help the poor, is serving, if left unchecked, to nullify many of the civil rights gains accomplished during the 1960's.

It is essential to the cause that civil rights strategists develop a counterattacking program to exploit more fully the racial benefits in revenue sharing. Since it is almost certain the program will be around in some form for years to

come, blacks must move quickly to acquire a better understanding of the program—to learn the secrets of its innerworkings—to energize the flickering light of opportunity at the end of this Federal rainbow.

REFLECTIONS ON PUBLIC POLICY

This new federalism program must be viewed as the product of extremely complex forces. It contains financial, political and social dimensions which shift the centers of decision-making from the Federal Government. It also reflects a resurgence of the traditional middle-class American antagonism towards blacks and the poor. While some of the anti-poor and anti-black backlash began to emerge as early as 1968, many attitudes were hardened in concrete with the changeover to revenue sharing.

It must be remembered that the advent of the revenue sharing program was accompanied by the large-scale impoundment of Federal funds for social programs and sharp cutbacks in categorical grants that helped inner cities, and with the termination of neighborhood development projects and housing subsidies for the low-income.

The new federalism was ushered in with much rhetoric about returning government to the people; about strengthening the capacities of city halls to deal with local problems. In reality the new federalism is a giant step backward from the efforts of the late 1960's to devise urgently needed national urban policies. Further it suggests that it is better to deal with national problems through thousands of uncoordinated local governments.

We continue to be plagued with too much local government fragmentation and prejudices, particularly within metropolitan areas. The economies of scale and the expansion of opportunities for blacks and the poor can best be captured through the consolidation and reorganization of metropolitan structures. This is another one of the minuses for revenue sharing. It has frozen the structure of local governments for the foreseeable future.

Were we to assume an optimistic posture about the program there are three sets of policies which must be worked out—in a coordinated way. They would embrace a form of general revenue sharing, block grants to further overall national priorities, and categorical grants to meet specific needs of the disadvantaged. A further possibility, which should not be overlooked, is to reduce the one-third share of the funds which now go to State governments, and channel those funds to the cities.

The neglect of our cities, in terms of their own urgent needs, and in the benefits they provide to their metropolitan areas, compounds the problems of decay and deterioration and results in the increased segregation of schools, housing, and society in general.

The black experience with general revenue sharing—if any lesson has been learned—should make it clear that the Federal Government cannot simply throw out billions of dollars to State and local governments with no strings attached—not if the rights and opportunities of all Americans are to be made secure and equal.

Mr. MORRIS. The written statement that we are presenting is not intended to be a full response to this particular hearing. It is an article that was prepared for publication. I wish to submit it for the record.

I am going to make summary remarks and then defer to Mr. Vail to describe to you their experience in their local community. First, the NAACP is on record in general opposition to the concept of general revenue sharing itself. Some of my recommendations are based upon the recognition that if we must have general revenue sharing, there are certain recommendations we are making.

It has been our experience in working with NAACP branches throughout the United States over the past 3 years, that the program itself has had an adverse effect upon the rate of progress toward the achievement of full and equal rights in this country for black and other minorities.

We are faced with the position of having to deal with thousands of local governments, rather than a central government, in terms of

civil rights enforcement and in providing equal opportunity in the use of Federal funds.

The private sector including the NAACP, I am convinced, does not have the capacity to monitor how these local governments are expending these funds in complying with nondiscrimination requirements.

I would observe that when this act was passed most blacks in the Nation did not pay much attention to it, or were not generally aware of the provisions of general revenue sharing, and how it might affect their lives and opportunities and the benefits they may be entitled to under the program.

The program lacks minimum standards to assure public participation and the chance to influence spending decisions of local governments. The planned and actual use reports are of very little value; even the ORS has admitted they have difficulty in being able to trace and track the flow of revenue funds as it goes into local government budgets.

So that has not been an effective means of providing information to the public so they can intelligently respond and participate in the local decisionmaking process.

We have been deeply concerned with the large amount of research, which has been federally funded, to look into general revenue sharing, with the lack of black and other minority input in the research to see what the impact has been. This has been generally lacking in the research activities being carried out.

We are also convinced that the ORS does not possess the capacity to assure the nondiscriminatory use of these funds in all of the many local governments throughout the country. As it perhaps has been observed, their staff of five is totally inadequate to carry out the provisions of the act. That includes their lack of capacity to follow up after investigations are completed and agreements made at the local level. We have often had to wait a period of 6 months or more before investigations are concluded and some kind of findings or recommendations are made.

The spending patterns of local governments clearly indicate to us that a very small amount of the funds are being spent for the benefit of disadvantaged people in the country, and almost none is expended to correct the imbalance of past discrimination.

We have one instance in Las Vegas, Nev., where funds were used to correct such an imbalance in streets and streetlights. This is very rare. Most of the dollars are going to capital expenditures for one-time projects, and generally to support police and fire department services. We note from the survey that, in fiscal 1974, \$1.5 billion was spent nationally on that particular item, while less than 1 percent of the funds were spent for social services to the poor and the aged.

Recipient governments are continuing their racial discrimination practices in the hiring and promotion policies that they have been following. The funds which have been freed up through general revenue sharing has been a problem. Our local people have not found it possible to track funds and find just where the dollars are being freed up in their budgets and revenue sharing funds substituted for other purposes.

The NAACP has been responsible for at least half of all of the racial discrimination complaints that have been filed. As of last June, the total amounted to 150 throughout the country.

One of our first complaints was the one Mr. Vail will describe in New Bern, N.C. In Dover, Del., we were able to overturn a 90-year practice of excluding blacks from the volunteer fire department. In Auburn, Ala., a private white academy had been utilizing the town's football stadium. Revenue sharing funds provided money to paint a part of the football stadium. We were successful in getting the Office of Revenue Sharing to have this practice discontinued. The academy has stopped using the stadium.

There are a number of other cases which I won't try to identify now for the sake of time. But I would share with you, in concluding, some recommendations we would like to place before you. We believe there should be increased aid given to cities and small towns based upon need, such as poverty, the crime rate, and other deteriorating conditions.

We suggest that the one-third allocation now going to State governments could and should be reduced. A portion of those funds could be committed to regional structures where there are councils of government or regional clearinghouses.

A priority in the implementation of areawide plans is very important, especially where public service employment can be created on a metropolitanwide basis.

In many cities, 40 to 50 percent of the land itself is not on the tax rolls of the local government. Revenue sharing funds should be used for the support of areawide transportation systems and fair share housing plans, so minorities could more easily reach places of employment throughout metropolitan areas, and for other community development activities.

I would suggest that State funds should be required to be spent primarily for the benefit of nonmetropolitan area-development, where housing and jobs and other services are needed in our rural areas. There should be a priority established for the spending of State funds.

Public participation in the general revenue sharing program should require public hearings. There should be a clearer identification of general revenue sharing funds in local government budgets and what it is actually spent for. There should be a requirement for State and local advisory committees to be created, and with some procedure to permit citizens to help select the representation that will serve on these advisory committees.

We recommend that funding be authorized to provide administrative, technical, and legal assistance to these committees so they can respond and effectively participate in the decisionmaking process.

We believe there should be a stiffer requirement for large cities and in regional structures that may be receiving general revenue sharing funds; whereby smaller governments that do not receive much of the funds—the same kind of requirement would not be needed.

In the nondiscrimination provisions, we believe there should be a requirement for compliance by local governments in all of their operations, rather than in just the use of general revenue sharing funds; as a condition to qualify for GRS funds.

The committee may wish to consider the provision of authority to issue cease and desist orders where discrimination is found in recipient government operations; and perhaps the establishment of an independent board or commission which would be responsible for assuring

nondiscrimination and citizen participation requirements in the use of revenue sharing funds.

We believe there should be a drastic increase in the civil rights enforcement and compliance staff. We are suggesting that somewhere between 150 to 200 persons would be the minimum that should be considered if the Federal Government is going to assure and guarantee civil rights protections and equal benefit in the expenditure of funds at the local level.

We suggest your consideration of authorizing the payment of financial damages to be paid through legal actions, and for class discrimination suits where local governments are found guilty of such practices. Perhaps a provision for free legal aid, if actions are brought by low-income or disadvantaged people who could not afford to bring such actions on their own.

On spending priorities, we feel the funds should be directed toward fulfilling national priorities with general categories for the way funds should be spent. Priorities should be geared, at this time, to job producing enterprises, to the assurance of social services to low-income and disadvantaged persons, and to encourage metropolitanwide programs and services—especially to improve access to job opportunities and for business and commercial developments that would produce jobs.

Also a major objective should be to reduce to a minimum what we consider to be local prejudices, and uncoordinated local government spending without regard to regional or national needs and priorities.

There needs to be established a priority spending category for programs which help local governments to improve their local tax base, such as returning non-tax-producing properties to local tax rolls, and supporting economic developments that produce a greater number of jobs and increased spending power within metropolitan areas.

On long-range funding, it is my view that throughout the country it is very difficult for local governments to plan ahead in terms of providing needed human and social services. Most of the dollars they decide to spend are on one-time capital expenditures in their area, rather than becoming involved in long-term funded programs which they are uncertain will continue from year to year. We feel some further consideration needs to be given to this approach providing there is an annual review and oversight authority written into the legislation.

I would like to yield at this point and ask Mr. Vail to share with you some of his experiences. This was the first or second formal complaint filed with the Office of Revenue Sharing in the country, in 1973.

Mr. Vail?

Mr. EDWARDS. Mr. Vail, do you have a printed statement here?

Mr. VAIL. My statement is mostly right out of my mind.

Mr. EDWARDS. Proceed.

Mr. VAIL. Thank you, members of the Judiciary Committee, and I am happy to be here today to let you know what is going on in our part of the country.

My name is William A. Vail, president of the New Bern chapter of the NAACP. I have been president of that branch for about 10 or 12 years. I live in the county of Craven, the city of New Bern. We have a population of 62,554 with 37 percent being black and within the city of New Bern about 14,660 with about 38 percent being black.

I filed these complaints because the city of New Bern got funds from the Office of Revenue Sharing for the building of a park and recreation center at Parrot Park. The reason I will say a park is because they really had in mind to build a park and recreation center at Parrot Park. But this particular park was in an all-white high class neighborhood out of reach for blacks. I will say, of most of the poor, lower income people and the blacks. So we had—I filed a complaint through the Office of Revenue Sharing. They came down and performed an investigation and they found at the time that the city of New Bern had not spent any funds at this particular time.

I wrote the Office of Revenue Sharing another formal complaint. As soon as they spent a dime, I wanted this case to go through. I knew it was a discriminatory practice that the city of New Bern had been using for years and they are still using.

Mr. KLEE. How was the park inaccessible? Was it a long distance away?

Mr. VAIL. A long distance away and in an all-white neighborhood. Anyway they came down and negotiated with the city authorities and the city authorities decided then that they would build two centers because—they really had promised us 15 to 20 years ago that they were always going to do something to our park when some money was available.

Every time money would become available they would never think about it. I have been to a board meeting and still was not successful in getting anything. One of my main complaints pertaining to the parks is the drainage system in the parks. After they decided to build two centers, they were supposed to fix our drainage within the parks and upgrade other facilities that had run down for the lack of maintenance in black neighborhoods.

We are still suffering with water, flooding in our park—D. E. Henderson, while they put in maybe a \$45,000 to \$50,000 drainage system in their park—Parrot Park with large pipes and everything. We have been trying to get somebody to really look into that and see if we can't get equal facilities as far as recreation is concerned.

The city was using revenue sharing funds for their fire department. Well, at that time they did not have any blacks in the New Bern City Fire Department.

In fact the city of New Bern doesn't have blacks in any prestige type jobs, no administrative type jobs in city government which puts them in noncompliance of most any Federal program that comes up. But we had something to happen last year or year before last, the city had engaged in removing 13 fire alarm boxes out of an all-black community, placing them in a newly annexed community—Colony Estates, and even out of the city limits.

I took this complaint forward to the city authorities and they met with the fire marshal of the city. They engaged in meetings and at this particular board of aldermen's meeting they brought out that these boxes never existed, that these were imaginary boxes.

Have you ever heard of an imaginary fire box? Well, anyway, that is what they said it was. I happen to be an electrician and have worked in this type of work for over 30 years.

I used to work for the city of New Bern and had to keep up these same fire alarm boxes. By these boxes being taken out of black communities, there have been two deaths because of people not being able

to find ways of sending in fire alarms. Telephones are scarce in this particular section and maybe if you could get a rundown on damage by fire at Craven Terrace housing project with the housing authority, there happens to be a housing project pretty close, Cravel Terrace housing project, they have had more fire damages there since these boxes have been removed than at any other time.

That facility is created by the government, run by the city. That means the government loses money every time one of their apartments burns. I have gone so far as to prove to you that these fire alarin boxes did exist and I am hoping that somebody will be able to do something about it.

I have collected pictures and here is one of the boxes and this was back in 1935 or 1936 and it shows a clear picture of the fire alarm boxes. This is one of the boxes that they said did not exist, and an imaginary fire alarm box.

I have statements here from citizens that have lived in these neighborhoods for over 50 years and been paying city taxes, that verify and gave me signed statements that these boxes exist.

I wrote to the Governor of our State about these fire alarin boxes.

Mr. EDWARDS. Is there a connection between revenue sharing and these fire boxes? If so, I did not quite catch it.

Mr. VAIL. Yes. Let me straighten this point out. The city of New Bern received revenue sharing money which they used in the city fire department. After it was discovered that these fire alarm boxes were missing, these fire alarm boxes could be replaced since you allow city and local government officials top priority on such things as public safety.

I think that was one of the main reasons I filed this complaint because lives were being lost. I have two statements here from two different ladies. I won't try to read them, but if you want copies, I will furnish you with copies.

These are people that happened to be living in the neighborhood where there was a life lost. Also I will give you a copy of residents that have lived in this particular community that have made statements that those fire alarm boxes did exist.

Every one of these fire alarm boxes came out of a predominantly black neighborhood and they were placed into a newly annexed area, Colony Estates, an out of town neighborhood taking care of industries like Stanley Tools, Inc. and a newly developed area, Colony Estates, where they have housing where the rent is \$200 a month and more.

That area is called Colony Estates. Quite a few people that live in this development have said I wish they would take these fire alarm boxes back and put them where they came from.

Are there any questions that any of you would like to ask pertaining to these fire alarm boxes or statements that I have made? If not, I will continue.

Employment discrimination in the city of New Bern, we don't have any blacks in administrative offices operated by the city in the city of New Bern, nor on the county of Craven. We have a courthouse. No blacks work in the county courthouse. No blacks work in the city hall with prestige type jobs. Of course, we have a few blacks in the police department and that seems to be the only department within the city

that comes anywhere near within compliance of receiving Federal funds, not only revenue sharing but any kind of Federal funds.

I think it is in the law that as far as equal employment opportunity not being enforced——

Mr. BUTLER. Mr. Chairman?

Mr. EDWARDS. Yes, Mr. Butler?

Mr. BUTLER. Funds went to the fire department, revenue sharing funds?

Mr. VAIL. Yes.

Mr. BUTLER. Prior to your complaint, there were no blacks employed in the fire department?

Mr. VAIL. No.

Mr. BUTLER. Are there blacks in the fire department now?

Mr. VAIL. Yes. We have two blacks in the fire department and two in the sheriff's department. The Office of Revenue Sharing so far as negotiating and getting the people to halfway do something, they have been pretty successful.

But it has kind of been like—people say years ago our President Johnson said he had a way he could kind of twist Congressmen and Senators arms into getting what he wanted done for the good of the country. Well, I think there has been a little bit too much arm twisting in enforcement of some of these laws, putting pressure on the Office of Revenue Sharing—refer to newspaper clipping dated September 19, 1973—to keep them from going through with these complaints.

For instance when I first took out these complaints—I will get around to another thing because this is a pretty hot issue and maybe you might hear about it later on. Anyway, the Office of Revenue Sharing has not been able to really enforce the laws because of intimidation by representatives of Congress I have been intimidated in appearing before these different boards, city board of aldermen and the recreation commission, 12-member board—9 whites, 3 blacks.

Mr. BUTLER. You did wind up with two parks, did you not?

Mr. VAIL. We already had two parks. The improvements—we needed and a center.

Mr. BUTLER. As a result of your complaints?

Mr. VAIL. We found out—we wound up with two recreation centers but the parks that the centers are located on, the parks that the recreation centers are located on, Parrot Park in a predominantly white neighborhood was a wooded area that they had to put bulldozers in there to clear it off. They have created a ballfield, drainage system, lighting and everything where in the black park, we already had a lighted ballfield, and some facilities in the park.

We did not have the buildings.

Mr. BUTLER. You got the buildings?

Mr. VAIL. We have got the buildings under construction.

Mr. BUTLER. And you got the building as a result of——

Mr. VAIL. As a result of the revenue sharing negotiation.

Mr. BUTLER. Were there any revenue sharing funds at the courthouse?

Mr. VAIL. In the jail.

Mr. BUTLER. As a result of that, the employment of blacks changed?

Mr. VAIL. Yes.

Mr. BUTLER. The revenue sharing funds went into your fire department, your police department. Anywhere else?

Mr. VAIL. I don't know.

Mr. BUTLER. When did you make the Revenue Sharing Office aware of your dissatisfaction with respect to the fire alarm boxes?

Mr. VAIL. That was last year.

Mr. BUTLER. You do not know what disposition was made of that one?

Mr. VAIL. We never heard about that other than it had not been resolved. I got a letter from the Governor of the State and he said that that was a local matter, that that would have to be straightened out with local government.

Mr. BUTLER. I wanted to be aware of exactly what you are saying. It sounds to me like you have gotten pretty good help.

Mr. MORRIS. The original complaints were filed with the Office of Revenue Sharing in June 1973. Last year, in 1974, the city chose to remove the fire alarm boxes primarily in the black community. Mr. Vail has confirmed that that is where they were taken from.

Some were reinstalled in predominantly white areas and outside the city. Since these boxes have been removed there have been how many deaths of blacks and citizens that have not been able to get quick fire service?

Mr. BUTLER. I am trying to find out where it is in the procedural process.

Mr. MORRIS. That has not been resolved.

Mr. BUTLER. Thank you very much.

Mr. VAIL. Being president of the local branch of the NAACP and you all having a law pertaining to harassment and intimidation. I wrote the ORS about the type of intimidation—the way the city treats me in these different meetings.

I have had intimidations by city authorities, the city attorney, and I have also had quite a bit of intimidation by members of the recreation commission. I want to let you know just how the city is set up. The city attorney is a paid man who gets about \$25,000 or \$30,000 a year plus \$50 for every meeting and he is in charge of delinquent tax foreclosures and like that.

He has an office way off from the courthouse and they foreclosed on more black property than white. They must have made a law that maybe after a couple of years or 2 years that they can foreclose on black property at anytime. It seems as if every time I would go to a meeting I would get a letter from the city attorney where I have lived in the city and I have worked in the city hall where the tax office is located from 1957 to 1961 and I do know people that their tax has been behind 15 and 20 years and you never hear their names called.

But I got a piece of paper from the city attorney's office which he had written down in parenthesis this is an updated account which has not been paid since November 1973.

This is 1975. Let's take action on this. Now this happened one day after I go to a meeting fighting about these fireboxes and all. This type of intimidation by a city attorney and city authorities I feel that it should be stopped.

You don't find many people really who are going to try to fight discrimination. The city and local government and State and Federal

Governments. If this committee would put more teeth in not only the Office of Revenue Sharing but any other Federal agency, give them teeth in enforcing the law some of these complaints would never be filed.

All laws are good but if you don't have a police department to enforce them they are not worth 2 cents. I appreciate talking with you all and I think that should wind up everything. Are there any questions?

Mr. EDWARDS. Mr. Drinan?

Mr. DRINAN. No questions.

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. No questions.

Mr. EDWARDS. Mr. Dodd?

Mr. DODD. No questions.

Mr. EDWARDS. Ms. McNair?

Ms. McNAIR. Have you had an ORS case that has been closed?

Mr. VAIL. No cases have been closed.

Ms. McNAIR. I have a record of a May 20 letter from ORS to New Bern stating that your case was closed on that date, that the city was in compliance and that it was in fact adequately dealing with your complaint regarding the parks, employment, and so forth.

Now, one of the commitments made by the city as I understand it, was that after they got that first noncompliance letter, they were going to undertake a maintenance program to clean the canals around your park, around the park in the predominantly black neighborhood.

What I want to know is whether or not as a result of that case being closed on May 20 you have any more open dirty canals that had been alleged to be snake infested.

Have they cleaned those canals as they promised?

Mr. VAIL. I am glad you asked that question. It had slipped my mind that I had gotten a letter from them that they had closed out this particular thing. I had written HUD that the city of New Bern was in noncompliance and that they hadn't lived up to their commitment to ORS in cleaning these snake-infested canals and upgraded or built miniparks in black neighborhoods. The city of New Bern was at that time trying to get a release of funds for a community development block grant, where citizens felt this location of project was a conflict of interest for Mayor Thiva. Some more arm twisting. ORS turned the city loose so that it could get this community development block grant approved. Our park still floods, our church and school yards still flood over though the city constructed another water tank with ORS funds at a cost of \$250,000. That was unnecessary in west New Bern where most of these funds are spent in high-class neighborhoods.

The snake-infested canals are still there. The canals have not been cleaned.

Ms. McNAIR. On the construction of the recreation centers, is that going along? Was the commitment that there be simultaneous construction?

Mr. VAIL. They kept a crew working all year on the all-white park until I wrote back to the Office of Revenue Sharing again to let them be aware.

Ms. McNAMR. But is it not the case that, with respect to that recreation center construction and with respect to that canal cleaning, your case is closed?

Mr. VAIL. It is closed but the work has not been done. Not only the canals have not been cleaned, in the parks, but the drainage problem and the updating of many parks—there were no miniparks put into the whole black community.

We only have one minipark and it consists of two swings, two seesaws and one basketball goal. They bus our kids to the white community for our kids to play an hour and then they bring them back to day care centers and their neighborhood.

Mr. EDWARDS. Mr. Klee?

Mr. KLEE. Mr. Morris, I would like to get on the record the position of the NAACP with respect to the "making up for past discrimination" regulation of ORS; in specific 31 CFR section 51.32(a)(4), which states that recipient governments shall not be prohibited by this section from taking any action to ameliorate an imbalance of services provided to any geographic area within its jurisdiction if the purpose of such action is to overcome prior discriminatory practices or usage.

This is to be read in the context of the statute which provides that no person on the grounds of race shall be excluded from participation in or be denied the benefits of or subjected to discrimination under any program funded by revenue sharing funds.

Is it your position that a program to remove the effects of past discrimination can actively favor a minority group to the extent of excluding a nonminority group from the benefits of the program?

Mr. MORRIS. If its purpose is to correct past practices that existed because of discrimination?

Mr. KLEE. Your position would be to support the legal point of the ORS with respect to a camp that was set up for Indian children and excluded children of all other racial groups. You would think that a program like that insofar as it discriminated against young white children who had never discriminated against anybody in their lifetime, you think that is permissible?

That program comes within the meaning of the statute?

Mr. MORRIS. I am not familiar with the case you are speaking of, the Indian situation there. But I would have some concern if the use of these funds were used to support a program that would exclude anyone because of their race or national origin.

I am not familiar with the case you are citing.

Mr. KLEE. Take it as hypothetical. If a town wanted to set up a camp to redress prior discrimination and they provided only one racial group could attend that camp, do you think that the regulation goes as far as to allow that?

Mr. MORRIS. Is this an Indian reservation you are referring to?

Mr. KLEE. Make it any hypothetical you want.

Mr. MORRIS. On a hypothetical case I would not believe that the program should exclude anyone because of their race in the process of correcting for imbalance or past practices of discrimination. It should not exclude or be limited to persons of just one particular racial background.

Mr. KLEE. So you think that the statute, with its general language about no person being discriminated against, limits the past discrimination regulation that I cited; you support that.

Mr. MORRIS. Yes.

Mr. BUTLER. Basically I have the impression that given the choice you would prefer that we not have a general revenue sharing program, correct?

Mr. MORRIS. Correct.

Mr. EDWARDS. Mr. Morris, Mr. Vail, thank you very much.

Our final witness is Under Secretary of the Treasury, Edward C. Schmults.

Mr. Schmults was formerly General Counsel of the Department of the Treasury and is intimately acquainted with the revenue sharing program. Accompanying Mr. Schmults is Mr. John K. Parker, Acting Director of the Office of Revenue Sharing. Until recently, Mr. Parker held the position of Deputy Director of the Office of Revenue Sharing.

Gentlemen, we thank you for coming and you may proceed with your statement.

**TESTIMONY OF EDWARD C. SCHMULTS, UNDER SECRETARY OF THE
TREASURY, ACCOMPANIED BY JOHN K. PARKER, ACTING DIRECTOR
OF THE OFFICE OF REVENUE SHARING**

Mr. SCHMULTS. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. I welcome the gentleman from the Treasury Department. General revenue sharing has been a welcome addition to our grants-in-aid. This program has done a good job in performing the basic tasks set out for it by Congress. Returning responsibilities to elective officials of general purpose State and local governments; helping to put fiscal resources where need is, and providing assistance free of the redtape and bureaucracy associated with categorical grants.

Because I view revenue sharing as a basically successful program, I support the administration's efforts to renew it. Our States and localities need to know now about the future of this program so that they can rationally plan their fiscal year 1977 budgets.

Despite the overall effectiveness of the program in doing what it was intended to do, it is wholly appropriate that the Congress continue to examine its operation in the light of experience. No Federal activity, especially one so important and costly as this one, should escape careful, regular scrutiny; therefore, this hearing today can serve a very useful purpose.

It has always been clear that Congress and the administration intended that the State and Local Fiscal Assistance Act not serve as a means by which to avoid Federal nondiscrimination standards. The nondiscrimination provisions of the act are clear and generally adequate.

It is my judgment that the Treasury Department has been conscientious and innovative in trying to deal with the massive job of assuring nondiscrimination in a program involving 39,000 jurisdictions.

It has sought to utilize existing Federal and State resources, informational efforts among recipients and citizens, as well as its own small

staff, in meeting its responsibilities. As more experience is gained, it is likely that this well-conceived plan will prove increasingly effective.

I am especially grateful that another large Federal bureaucracy has not been erected in the Office of Revenue Sharing. This would not only contradict the essential thrust of the program but would be an additional burden on the taxpayer.

We have learned in the past that additional bureaucracy does not necessarily guarantee better protection of individual rights, and presents certain dangers to those rights.

I am hopeful that today this subcommittee can explore with the representatives of the Treasury ways of improving upon revenue sharing civil rights compliance within the broad outlines of the current approach.

Mr. SCHMULTS. Thank you for those remarks, Mr. Butler. We are delighted to hear them.

Mr. EDWARDS. Without objection the entire statement will be included in the record. We would appreciate it if you could summarize your statement, Mr. Schmultz.

[The prepared statement of Mr. Schmultz follows:]

STATEMENT OF EDWARD C. SCHMULTS, UNDER SECRETARY OF THE TREASURY

Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to testify about the civil rights implications of the General Revenue Sharing program. I recognize the importance of these hearings. The requirement that there be no discrimination in the use of shared revenues is of central importance to the success of this new type of Federal inter-governmental assistance. It is absolutely essential that Federal funds supplied through revenue sharing are not used to support any program or activity that discriminates against any of our citizens.

I am familiar with at least some of the issues which these hearings will address. I have been closely concerned with the revenue sharing program for over a year now. In a recent Departmental reorganization, my office, that of Under Secretary of the Treasury, was assigned general responsibility over the Office of Revenue Sharing. I also served as chairman of an inter-agency task force which reviewed the revenue sharing program and made recommendations concerning its renewal.

The nondiscrimination requirement underlying revenue sharing is clearly and definitely stated in the Act that authorized the program. Section 122 of the State and Local Fiscal Assistance Act of 1972 provides that there shall be no discrimination on the grounds of race, color, national origin or sex in any program or activity funded in whole or part with shared revenues. The specific prohibition against sex discrimination is one that was not included in the protections provided in prior Federal programs. The revenue sharing act then outlines the steps that can be taken by the Secretary of the Treasury and the Attorney General in assuring compliance with the nondiscrimination provision.

The Administration's review of the revenue sharing program led us to propose one important change in the nondiscrimination provision of the present statute. H.R. 6558, the Administration's renewal bill specifically sets forth the remedies available to the Secretary of the Treasury to assure that shared revenues are not used to support discriminatory activity.

The proposed renewal statute specifies that where discrimination is found the Secretary of the Treasury will have the option of withholding the entire amount of a recipient's entitlement or of limiting the withholding to those funds directly involved in the discriminatory program. The Secretary is also specifically authorized (1) to terminate the eligibility of a jurisdiction to receive future payments and (2) to require repayment by a jurisdiction of revenue sharing funds expended in a discriminatory program.

Two ends would be accomplished by these changes. First, it is arguable that the present statute, through references to Title VI of the Civil Rights Act of 1964, limits withholding and termination to the local program for which there has been a finding of noncompliance. It can also be argued that since Title VI

does not authorize repayment, the existing GRS statute would not permit this either. As a result, present revenue sharing regulations, by authorizing these remedies, might be said to exceed what is permitted under the present law. The change proposed would explicitly authorize both actions. Our primary goal here is to eliminate possible confusion and counterproductive litigation.

The second end that would be served by the proposed amendments would be the establishment of a more flexible, usable tool for enforcement. In cases where it is appropriate to withhold only part of a jurisdiction's entitlement, such action lessens the unnecessary harm caused to citizens benefiting from funds not utilized in a discriminatory manner. It should be noted that the Secretary could withhold all shared revenues going to a jurisdiction should there be any doubt about which portion of the entitlement was being used in violation of the act. This sanction could also be applied where recipients purposely redirect revenue sharing funds in relation to their own revenues in order to avoid compliance.

To enforce the nondiscrimination requirement of the revenue sharing statute, the Office of Revenue Sharing has developed a civil rights compliance program in which internal resources are buttressed through a system of cooperative arrangements with other Federal compliance agencies, with State human rights agencies, and with State audit offices. This approach has four general benefits. First, it enables ORS to supplement its own capabilities with resources provided by compliance agencies with similar interests and overlapping program responsibilities. Secondly, it contributes to the coordination of existing civil rights compliance programs. Thirdly, it provides a better means of dealing with the enormous jurisdictional and functional scope of revenue sharing. Finally, by utilizing State and local resources to the extent feasible, it reaffirms the basic thrust of the revenue sharing program.

The Treasury Department and the Office of Revenue Sharing do not plan to relinquish the ultimate responsibility for assuring nondiscriminatory use of shared revenues. While we are utilizing resources made available by others, we feel that we have the responsibility to monitor the effectiveness of the cooperative efforts that other agencies are making in our behalf. Furthermore, we believe that we must retain the responsibility of making final determinations in revenue sharing compliance cases. To completely shift compliance responsibility to another agency would insulate us from controversy. We do not believe, however, that such a course of action would promote effective enforcement of the nondiscrimination requirement of the revenue sharing statute. Other Federal agencies to which responsibility for revenue sharing civil rights matters might be transferred, such as the Justice Department or the Equal Employment Opportunity Commission, have their hands full with their own programs and caseloads. Justice, furthermore, is organized to deal with civil rights problems through litigation, rather than the administrative process. Both elements are clearly important parts of a total Federal civil rights strategy.

The number and nature of recipients and the degree to which funds are spread among State and local functional activities make civil rights enforcement under revenue sharing a somewhat unique undertaking—an undertaking that is different from most program concerns of other compliance agencies. Finally, if the Office of Revenue Sharing were not to continue to have responsibility for civil rights determination, there would still be need for extensive coordination between whomever were to assume such responsibility and ORS in its role of administering and auditing the underlying revenue sharing program.

Despite our efforts to make use of existing outside civil rights compliance resources where appropriate, we recognize that primary responsibility still rests with our small ORS staff. The Office of Revenue Sharing has an authorized staff of 108 for Fiscal Year 1976. As of the present, we have about 90 full time employees. There are thirty positions in the Compliance Division. In the civil rights area, the efforts of five ORS civil rights specialists (a number which will be increasing to ten during FY 1976) are supplemented by those of fifteen Compliance Division auditors and six lawyers from the Office of Chief Counsel. Further, the Intergovernmental Relations Division with nine professionals and the Public Affairs Manager play an important role in informing recipient governments of their civil rights responsibilities and citizens of their rights.

Those involved in ORS civil rights efforts have many responsibilities. For example, they must react to complaints, assist with court cases, deal with problem situations brought to light through information generated outside of ORS, spotcheck on and improve the operation of various cooperative relationships,

and continue to publicize the nondiscrimination requirements of the program. As part of its responsibilities, the civil rights branch of the ORS Compliance Division had conducted 51 field reviews and 13 reviews of investigations by other Federal agencies as of mid-September, 1975. Our civil rights caseload is a substantial one and there is a significant backlog. As of September 30, 1975, ORS had received 177 civil rights cases, of which 49 had been resolved. This 177 was part of a total of around 630 compliance cases of all sorts.

We have believed for some time that the efficiency of our complaint resolution process could be improved, and we have been working hard to do so. The addition of more civil rights compliance officers to the staff is one important step in this direction. Further, we have developed an improved case workload control system to help keep track of the status of various cases and let us know which ones need priority attention. This system also gives us the capability to analyze our caseload from the standpoint of more efficient utilization of staff.

Other improvements in procedures which ORS is making are reorganization of its staff; greater formalization of working procedures; better record keeping; and improvement of the violation determination letter which goes to a recipient government found not to be in compliance.

Besides acting on complaints, the Office of Revenue Sharing has long been aware of the need to develop better means of identifying instances of discrimination. ORS is currently in the process of developing the capacity to utilize statistics on employment derived from the EEO-4 forms and from Census labor force data to identify potential employment discrimination. Of course, one key element of ORS's various cooperative agreements is to identify situations where there may be discrimination.

The Office of Revenue Sharing has signed formal cooperative agreements with the Equal Employment Opportunity Commission, the Department of Justice, and the Department of Health, Education, and Welfare. Efforts are being made to negotiate an agreement with the Department of Housing and Urban Development. Procedural implementation of the EEOC agreement is being worked out. The EEOC has already issued instructions to its regional offices about new procedures. The HEW agreement will soon be fully implemented at the field level.

At this stage in the process, the cooperative agreements ORS has entered provide for the exchange of compliance information, the coordination of investigations and negotiations, and joint enforcement action. It is quite possible that in the future there will be a complete substitution of investigative effort on a case-by-case basis and agreement to mutually rely on the subsequent fact finding needed to make compliance determinations.

Cooperative agreements have already yielded several important benefits:

Access to EEOC complaint information by auditors working under ORS State audit agreements;

Exchange of ORS 15-day initial notification letters and HEW Title VI compliance information;

Nineteen civil rights reviews either have been conducted jointly with Justice or conducted for ORS by Justice.

The Office of Revenue Sharing is also utilizing State human rights agencies as a source of compliance information and investigative and monitoring support. Ten agreements have been signed with State "706 agencies." These are State law before proceeding itself. EEOC also gives finding by "706 agencies" "substantial weight" in its own deliberations. ORS has established working relationships with two State human rights agencies that have not been certified by the EEOC.

The ORS—State human rights agency agreements generally provide for the exchange of compliance information, and for cooperation and coordination in investigating complaints and monitoring compliance. The Office of Revenue Sharing gives "substantial weight" to the findings of EEOC certified State agencies but is retaining responsibility for making its own final determination in compliance cases.

The Administration is aware that some State human rights agencies have limitations in their capacity to help with revenue sharing civil rights enforcement. Yet we believe that greater results can be achieved through cooperative action than through completely independent and uncoordinated efforts. Further, there is the possibility that coordination with ORS will give these agencies—as well as ORS—greater ability to successfully resolve discrimination issues.

There have already been several instances where investigations by State human rights agencies have been part of the basis for an ORS determination of

noncompliance. ORS, on its part, supplies copies of "15-day letters" informing recipients of allegations of discriminatory conduct, to the State agency concerned. ORS has also supported State agency efforts to obtain information from local governments.

A third element in ORS's efforts to supplement its own compliance resources with those already in place, is its system of agreements with State audit agencies. Forty-three States are covered by agreements that involve the auditing of forty State governments and approximately 15,000 local governments. Approximately 50 percent of all GRS allocations are covered by these agreements.

Under most ORS-State audit agency agreements, State audit offices assume responsibility for auditing the use of shared revenues by State and local agencies. Often, also included is a review of the work of Independent Public Auditors employed by localities. Essentially the State auditors expand their own audits to include General Revenue Sharing funds and to incorporate the standards of the *ORS Audit Guide and Standards for Revenue Sharing Recipients*. The degree of coverage of State, local, and independent Public Auditor audits varies from one agreement to another.

On the local level about 32 percent of funds and 30 percent of recipients nationwide are audited by Independent Public Auditors. The work of some of these is reviewed by cooperating State agencies. Many Independent Public Auditors also utilize the *ORS Audit Guide*.

One part of the *ORS Audit Guide* is a checklist of civil rights questions which the auditor is to cover. Reports of audits which have detected noncompliance with various standards of the *Audit Guide* are sent to ORS for review by the audit staff of the Compliance Division.

While the potential of the audit system as a means of detecting civil rights violations is evident, to date it has been of limited success in serving this function. We hope to be able to improve its ability to do so. Nevertheless, the existing audit system performs well in carrying out its other functions. It appears to be the best way available to assure that the basic legal and financial requirements of the State and Local Fiscal Assistance Act are observed. ORS auditors also compliment the efforts of the civil rights compliance staff by providing necessary information on the placement of shared revenue by recipients and by assisting in on-site investigations.

There is one final aspect of the Office of Revenue Sharing strategy to combat discriminatory use of shared funds which should not be overlooked. This is the diligent effort by ORS's Intergovernmental Relations and Public Affairs Divisions to inform the 39,000 recipient jurisdictions of their civil rights responsibilities, and to inform citizens of their rights under the Act. This role is important since many recipients otherwise would have limited contact with the Federal government and little interest in national civil rights standards.

I would like to list some of the major efforts ORS has made to this end:

Bi-monthly publication of the *Reve-news* newsletter, the last three issues of which have included major civil rights articles. (Distributed to Congress, media, interest groups and associations.)

Letters accompanying entitlement checks during Entitlement 5 all contained civil rights information for recipients. (Distributed to all recipient governments.)

Distribution of 160,000 copies of the pamphlet "Getting Involved" containing important civil rights material. (Distributed to recipients with populations over 5,000, organizations and associations, media.)

Publication of the pamphlet "General Revenue Sharing and Civil Rights". (Distributed to all recipients, to organizations and associations, at conferences.)

Development with EEOC of a guidebook for recipients to use to eliminate discrimination. (In the process of development.)

Participation by ORS staff in panel groups and as speakers at around thirty human rights oriented gatherings between May, 1973 and July, 1975.

Participation by ORS in intrastate training project meetings, with public officials and organizations, where civil rights has been an important aspect of the program.

Letters notifying all local governments in States where agreements have been signed by ORS with State human rights agencies.

Participation by ORS as an exhibitor at conventions of civil rights groups.

News releases and fact sheets noting civil rights issues.

Development of a network of contacts among officials, citizen groups, interest groups and others at both the State and local levels to help publicize civil rights information and answer inquiries.

We would not claim that all governments have been fully appraised of GRS nondiscrimination requirements and all individuals of their rights under the GRS Act. We would, however, maintain that given the enormity of the task and available resources, we have made a serious attempt to do so.

I have tried to describe some of the ways in which the Office of Revenue Sharing has sought to carry out its civil rights responsibilities. We are aware that there is need for improvement in some aspects of our compliance program. We have, for some time, been working to develop ways to strengthen our efforts. We have looked into the criticisms and advice offered by a wide range of sources: the reports of the United States Commission on Civil Rights; reports of and interviews with the General Accounting Office; National Science Foundation-sponsored studies; the reports of the National Clearinghouse on Revenue Sharing; the Urban League's review; hearings before this and other Congressional committees; contact with the Justice Department, Equal Employment Opportunity Commission and Federal grant agencies; conferences with and correspondence from civil rights groups; and comments received on proposed regulations. In addition to these outside sources, civil rights compliance was a subject considered last year by a Treasury Department management study team in a management report on ORS furnished to you. We are currently completing another internal study with the primary purpose of identifying further improvements in our compliance system. We will make this report available to the Subcommittee as soon as it is completed.

We are addressing a number of serious civil rights issues. We will undertake the operational improvements that I cited earlier. ORS will soon be getting some of the additional staff that it badly needs. In noting this, I do not mean to imply that we are going to be able to satisfy all the criticisms that have been raised about the revenue sharing civil rights effort. For example, there are some critics who would like to have ORS itself closely monitor the activities of all 39,000 recipient governments. This would take a huge, new compliance apparatus. It would mean a significant intrusion into the day-to-day operation of every State and local government in America.

One analyst has estimated that it would take 7,800 auditors to conduct an annual audit of every recipient. Whether a Congress, which granted only five of the twenty-six additional ORS compliance positions requested by the President for Fiscal Year 1975 and eleven out of twenty-one positions requested for Fiscal Year 1976, would be willing to commit the resources that would be required to carry out such a program is open to question. It is our own view that the cooperative arrangements that I previously described will go a long way in accomplishing a similar result.

An issue closely related to whether a substantially greater Federal monitoring effort is needed is the question whether the nondiscrimination provisions of the revenue sharing statute should apply to all resources of a recipient jurisdiction. At the basis of this recommendation is the argument that all money, including shared revenues, is fungible and that effects of the uses of shared revenues may be diverse. While this argument is not unreasonable, it should be noted that money derived from other Federal programs also releases other resources at the State and local level for use at the discretion of the recipient.

It is clear that the Congress in enacting the State and Local Fiscal Assistance Act intended that its nondiscrimination provision apply only to programs or activities funded in whole or part with revenue sharing money. Where it was intended that indirect impact be accounted for, as in the case of the restriction against using revenue sharing to meet the matching requirements of other Federal programs, this was specifically stated in the statute. In *Matthews vs. Massell* a Federal Court said that another use limitation, that establishing local priority expenditure categories, did not apply to legitimately freed-up local funds. While making such a ruling, the court disallowed an accounting manipulation designed to circumvent the Act.

In considering the issue of whether Section 122 should be extended to include all a recipient's resources, one should note that there has been no suggestion by any commentators that States and communities have been allocating their revenue sharing funds to activities with limited civil rights implications to avoid responding to the GRS nondiscrimination standards.

If the nondiscrimination provision of the revenue sharing act were to apply to all resources of a jurisdiction, Congress should make an explicit decision to do so in full awareness of the implications it has for the General Revenue Sharing program and the need for a large Federal compliance apparatus. To ignore the

latter would make such a change a hollow gesture. Revenue sharing was designed to provide generalized no-strings Federal assistance to State and local governments. While a major concern was that the funds made available not go to support discriminatory activity the program was not enacted primarily as a civil rights initiative. There are Federal, State and local statutes and there are civil rights agencies at all levels of government whose main task is to eradicate discrimination.

Revenue sharing does further Federal civil rights efforts. The program contributes to the general civil rights goals of the Federal government by making Federal standards applicable to many additional jurisdictions and areas of governmental activity. While awareness of these national standards may largely be brought about through informational efforts rather than Federal mandate, it is conveyed just the same. Further, the civil rights efforts of other Federal agencies, such as the Equal Employment Opportunity Commission, and the efforts of State human rights agencies are being strengthened through exchanges of information with ORS and through the sanctions that are available if shared revenues are found to be involved in a program that they are investigating.

Finally, evidence appears in the NSF-supported study, "Civil Rights Under General Revenue Sharing" and the most recent report of the National Clearinghouse on Revenue Sharing that some governments have used their GRS entitlements to redress the impacts of past discrimination.

There are two other important ways, aside from its compliance efforts, in which the General Revenue Sharing program has benefited minorities and the underprivileged. We think that decisions about the use of GRS entitlements as well as concern that funds not support discriminatory activity have led to greater involvement in community affairs at the State and local levels by civil rights organizations. About one-half of the revenue sharing civil rights compliance cases have been initiated by organizations. The publicity and public participation requirements of the Act have focused attention on revenue sharing spending decisions. They have enabled citizen groups to get a better perspective on the political processes in their communities and on where to "weigh-in" with their views.

Secondly, the Administration is confident that revenue sharing funds themselves are of much greater benefit to the poor and minorities than may appear at first glance. We know that low income States and urban centers receive larger than average per capita GRS allocations. States spend large portions of their GRS funds on education. Social concerns are addressed by some capital expenditures reported by recipient governments. Expenditures made in functional areas such as transportation, health, or environment often benefit the poor and the aged. Finally, the presence of revenue sharing money frees up State and local resources for programs to meet human needs.

In conclusion, the Administration feels that revenue sharing furthers the goal of assuring equal treatment for all our citizens. We think we have been innovative in our responses to the important task that I have outlined. We need a larger civil rights staff at the Office of Revenue Sharing. We need to utilize that staff more effectively. We must continue our efforts to derive greater assistance from the cooperative arrangements we have with other agencies. There have been shortcomings during the first three years of the revenue sharing program, but we are confident that these will be overcome and that General Revenue Sharing can do a better job in attaining our National civil rights goals.

Mr. SCHMULTS. Thank you, Mr. Chairman. I would be happy to summarize my statement. The full text, I understand will appear in the record.

First of all, I think the requirement that there be no discrimination in the use of general revenue sharing funds is of central importance to the success of this new type of Federal intergovernmental assistance. It is absolutely essential that Federal funds supplied through revenue sharing are not used to support any program or activity that discriminates against any of our citizens. Let there be no doubt that we share this common goal.

With respect to my own participation, I have been involved with the revenue sharing program for over a year now. In a recent departmental reorganization, my office, that of the Under Secretary of the

Treasury, was assigned general responsibility for the Office of Revenue Sharing. I also served as a chairman of an interagency task force which reviewed the revenue sharing program for the President and made recommendations as to its renewal. These have been incorporated in the administration's bill introduced in the House and the Senate.

We believe that the nondiscrimination requirement underlying revenue sharing is clearly and definitely stated in section 122 of the State and Local Fiscal Assistance Act of 1972. It provides that there can be no discrimination on the grounds of race, color, national origin, or sex in any program or activity founded in whole or in part with shared revenue.

The specific prohibition against sex discrimination was one that was not included in prior Federal statutes. We think the provision is a good, strong provision. Notwithstanding that, we have proposed an important change and improvement in that section. We urge that the law clearly set forth the remedies available to the Secretary of the Treasury so that he may better assure that shared revenues are not used to support discriminatory activity.

The additions we have recommended would make clear that the Secretary has the authority to withhold all revenue sharing funds allocated to a jurisdiction or to limit the withholding only to those funds directly involved in a discriminatory program. Second, the Secretary would be specifically authorized to terminate the eligibility of a jurisdiction to receive future payments and he could require repayment by the jurisdiction of revenue sharing funds expended in a discriminatory program.

Two ends are served by these changes. First, we think it is arguable that we may have authority under the present statute only to withhold funds used in a specific discriminatory program. Therefore, our present regulations might be broader than the existing law.

Second, we think that by giving the Secretary some additional discretion in this area, he will be able to forge a more flexible, usable remedy. Where funds are going to a jurisdiction and there is any doubt as to which portion of those funds are going to a program that discriminates or if the Secretary believes that the local jurisdiction is manipulating its reporting or its accounting procedures, he could withhold all funds.

We think this is a strengthening of the present statute. To enforce the civil rights—

Mr. BUTLER. Let me be sure that I am following you on that particular one. Let us consider New Bern. We have grants, one of which went to recreational purposes and the other of which went to the fire department.

Is it your view that under the existing legislation that if there were discrimination in the fire department but no suggestion of discrimination in the use of recreational funds, that only the funds for the fire department could be withheld?

Mr. SCHULTS. That is correct.

Mr. BUTLER. If there is discrimination in the fire department, you can take the recreational money away as well, is that correct?

Mr. SCHULTS. No, sir. Where you could identify only so many dollars going to the fire department and other dollars going to the recre-

ation department and that were clear and could be established, we would presumably, in the normal course, only withhold the funds going to the fire department. But where it was unclear what portion was going to the fire department or where we felt the local officials were acting in bad faith or were setting up a facade or trying to fool us, the Secretary would have the power to withhold all funds. That would be to avoid an argument that only so many dollars are going to the discriminatory program and others claiming "no," it is really more. If we were not sure we would have the power to withhold all.

Mr. BUTLER. But the power to withhold would be conditioned on a finding of some sort?

Mr. SCHMULTS. This assumes a finding of discrimination after the local jurisdiction has had its "day in court." I am assuming that we have gone through the administrative process or through a court.

Mr. BUTLER. With reference to the specific funds involved you would further have a finding that you would not invade another program until you found that the funds were not traceable?

Mr. SCHMULTS. That would be the Secretary's determination.

Mr. BUTLER. Then you would further strengthen the office by giving the power to require a repayment.

Mr. SCHMULTS. That is correct.

Mr. BUTLER. You would have to go through the procedural steps in determining the discrimination.

Mr. SCHMULTS. Yes. As to repayment, we don't believe we have that power now.

Mr. BUTLER. That is without precedent, is it not?

Mr. SCHMULTS. I can't think of any precedents.

Mr. BUTLER. The purpose then would have to be limited to that particular repayment. It would have to be only of the funds involved in that particular project, is that correct?

Mr. SCHMULTS. That is correct. With respect to a precedent, the Revenue Sharing Act itself where you have a violation of the priority expenditure categories, there can be a repayment of 110 percent of funds spent in violation of that requirement. So there is an analogous precedent.

Continuing with my summary, to enforce the nondiscrimination provision of the revenue sharing law, the Office of Revenue Sharing has developed a civil rights compliance program in which internal resources are buttressed through a system of cooperative arrangements with other Federal compliance agencies. There also are arrangements with State human rights agencies and with State auditing agencies. This approach has four general benefits. It enables the Office of Revenue Sharing to supplement its own capabilities. It contributes to the existing civil rights compliance programs throughout the Federal Government. It provides a better means of dealing with the enormous jurisdictional and functional scope of revenue sharing. Finally, by utilizing State and local resources, to the extent feasible, it reaffirms the basic thrust of the revenue sharing program.

Now despite these cooperative activities, we recognize that we have at the Treasury Department and the Office of Revenue Sharing the principal responsibility to enforce the antidiscrimination provisions of the law.

We have an authorized staff now of 108 people. At present we have about 90 full-time employees. In the civil rights area, it is true we have five full-time civil rights specialists. I suppose in response to the criticism I should say only five. But I would like to note that this is a number that is going to be increased to 10 in fiscal 1976. Also you should be aware that these civil rights specialists are supplemented by 15 compliance division auditors, and by six lawyers in the Office of the Chief Counsel. In addition, our Intergovernmental Relations Division with nine professionals and a public affairs manager, play an important role in informing recipient governments of their civil rights responsibilities and our citizens of their rights.

It is true that we have a backlog of compliance cases which is substantial. As of September 30, 1975, we had received 177 civil rights cases of which 49 have been resolved. Now this is part of a total of about 630 compliance cases of all sorts.

Mr. KLEE. Perhaps you could place this in perspective with the backlog of other agencies involved in the civil rights area, how does this compare?

Mr. SCHMULTS. I take very little comfort in saying that our own backlog is smaller and we are doing a good job and other people are doing worse. We believe the backlog is heavy in other agencies. These cases are difficult to come to grips with. We have to send people out. We have to coordinate with the other government agencies and government moves ponderously. There are backlogs in other agencies but I certainly don't want to cite the heavy backlogs in other agencies as saying we don't want to do anything about ours.

Mr. KLEE. I understand.

Mr. EDWARDS. Let's see if we can move along. We have had a request from the members that there be no interruptions until the statement is finished and then we will proceed under the 5-minute rule.

Mr. SCHMULTS. I believe we can improve our complaint resolution process. We are going to be adding more civil rights complaints officers. We have developed an improved case workload control system. This will enable us to better control the priority of our cases and to analyze them. Other improvements we are making are reorganization of staff, greater formalization of working procedures, development of a manual so all of our employees will know more precisely what they have to do and when, better recordkeeping and improvement of the violation determination letter which goes to a recipient government found not to be in compliance.

Returning for a minute to the cooperative agreements, ORS has signed them with the Equal Employment Opportunity Commission, the Department of Justice, the Department of HEW. These agreements provide for the exchange of compliance information, the coordination of investigations and negotiations, and joint enforcement action.

Cooperative agreements have already yielded important benefits: They have permitted access to the EEOC information by auditors; we have exchanged some of our complaint notification material with HEW; 19 civil rights reviews have been conducted either jointly by ORS and Justice or by Justice for ORS.

Agreements that we have with State human rights or 706 agencies also provide for the exchange of compliance information and for coop-

eration and coordination in investigating complaints and in monitoring compliance.

A third element of our cooperative effort is that ORS has agreements with State audit agencies. We have 43 States now covered by agreements that involve the auditing of 40 State governments and approximately 15,000 local governments. Approximately 50 percent of all General Revenue Sharing allocations are covered by these agreements.

One final aspect of our effort at ORS to combat discriminatory use of shared revenues is a very important function which our Intergovernmental Relations and Public Affairs Divisions have—that is to inform the 39,000 recipient jurisdictions of their civil rights responsibilities and to inform all of our citizens of their rights under the Revenue Sharing Act.

What are some of the things we have done in this respect? Well, ORS publishes bimonthly a "Reve-news" newsletter. Letters accompanying the entitlement checks during Entitlement Period 5—all contained civil rights information for all recipient governments. We distributed 160,000 copies of a pamphlet called "Getting Involved." A pamphlet entitled "General Revenue Sharing and Civil Rights" was widely distributed and received a lot of compliments. We are developing with EEOC a guidebook for recipients to use to eliminate discrimination in employment and in the provision of services by local governments, a very important area. Our staff has participated in panel groups and human rights symposia around the country. We have participated as an exhibitor in conventions of civil rights groups. We issue news releases and fact sheets concerning civil rights. We have a network of contacts. Among officials, citizen groups, interest groups and others. Thus, we have done a lot in the area of informing people.

We are well aware of the need to improve our operations. We have reviewed all of the studies of the public interest groups, the National Science Foundation, the Urban League, the NAACP and others from whom you have heard today.

We are trying to identify areas where we can improve our efforts. One important question addressed in my written statement that I want to mention is whether the nondiscrimination provisions of the revenue sharing statute should apply to all resources of a recipient jurisdiction.

It is our view at the Treasury Department that Congress clearly intended in enacting the present law that only programs or activities funded in whole or in part with revenue sharing money are to be looked at in enforcing the civil rights provisions of the statute. We have some support here in a court case as well. In that connection I would like to note that there has been no suggestion in any of the studies that I have read that any of the State or local governments are arbitrarily assigning moneys to uses to avoid the impact of the civil rights provisions of the law. Indeed the studies that I have read have tended to point this out. They have said that they can find no evidence of this. I think that is an important thing to keep in mind.

It is our view that if Congress wishes to make an explicit decision to have all of the activities of all 39,000 State and local governments, all their programs, covered by a Federal civil rights effort with a

new bureaucracy to go out and look into these things, Congress should do so in a specific separate statute and address it that way.

One of the reasons for our conclusion is there is a considerable Federal effort now underway to address these problems. We have EEOC, HEW, HUD, the Department of Justice, all of whom have thousands of investigators in the aggregate who are seeking to eradicate discrimination. It seems to us unnecessary to change the revenue sharing statute in response to this criticism.

There are some other ways in which **general revenue sharing** has benefited the minorities and the underprivileged. It has led to greater **involvement in local community affairs** and in the local budget process by public interest groups, civil rights organizations and others.

I was delighted to see Mr. Morris' statement on this point. He has a full page or more in his statement clearly showing what the NAACP has done in this area. I think that is a marvelous thing. Last week I was up in Rochester speaking to a seminar on revenue sharing sponsored by the local chapter of the urban league. These activities should be encouraged and we applaud them.

Second, revenue sharing has really been of much greater benefit to the poor and minorities, than it may seem. People cite the small figure going to programs for the poor and the aged in the use reports that come in. But it is important to note that more money goes to poorer States than richer States. For example Mississippi, if I recall correctly, got in 1972 about \$39 per capita. California got \$28 per capita. We looked at Chicago, Cleveland, New York, and Los Angeles, and found they all get much more revenue sharing fund per capita than do their suburbs.

States spend a large proportion of their money on education. Other expenditures made in the functional such as transportation, health or environment often benefit the poor or the aged. Last, revenue sharing money frees up other State and local resources that in large part go to ongoing programs to meet human needs.

In conclusion, the administration feels that revenue sharing furthers the goal of assuring equal treatment for all our citizens. We think we have been innovative in our responses to the important task that I have outlined. We need a larger civil rights staff at the Office of Revenue Sharing. We need to utilize that staff more effectively. We must continue our efforts to derive greater assistance from the cooperative arrangements we have with other agencies. There have been shortcomings during the first 3 years of the revenue sharing program, but we are confident that these will be overcome and that general revenue sharing can do a better job in attaining our national civil rights goals.

Mr. EDWARDS. Thank you.

Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman. Mr. Secretary, we have heard pretty much what you are saying 2 years ago and we have followed this program intentionally. It is good to have faith in Federal agencies but what is the evidence?

Similar promises were made and nothing has transpired. You have heard or read the testimony today and it is very dismal. On what evidence should we go along with what you are suggesting?

Mr. SCHMULTS. I think the New Bern example is an excellent case in point for the question that you raise. Let's take New Bern.

Mr. DRINAN. It is my time—

Mr. SCHMULTS. The civil rights issues in New Bern might not have been addressed without revenue sharing. The local community did make the park improvements at the same time. Through general revenue sharing there was a commitment to take the first vacancy in the fire department and hire a black fireman. There was an agreement for an affirmative action program in the fire department.

I would submit that revenue sharing has introduced Federal civil rights rules and requirements to levels of government that have been untouched by these requirements in the past because they don't receive any other Federal assistance. I think there can be major improvements made in civil rights through general revenue sharing and we have to do better. I don't think it can be done all at once but progress is there.

Mr. DRINAN. What do you think of the recommendation made here by thoughtful people who know the background that the record of the ORS has been so disastrous and it has demonstrated such a lack of commitment that they want the whole thing transferred to the Justice Department?

Mr. SCHMULTS. First of all, I don't think the record has been dismal. We acknowledge that there is room for improvement. You have to remember that we have been in business only a short period of time. There was much to be done. We are trying to address these problems. Secondly I would not be in favor of transferring responsibility to the Department of Justice. It would fractionate responsibility for general revenue sharing. Justice has its hands full with its own programs and responsibilities. I think the way to go is the present program to coordinate with the Justice Department and other Federal and State agencies to achieve a common goal.

Mr. DRINAN. There are 62 school systems that HEW considers to be in violation of desegregation standards. There is some evidence that in a lot of those there is revenue sharing funds from the State level. What, if anything, has ORS done?

Mr. SCHMULTS. While the list that you cite may be that long, there is only one public school district and two private institutions which do not receive revenue sharing funds for which there have been final determinations for final withholding purposes.

While that list you cite looks like a final, final determination, it is my understanding that it is really an interim step in HEW's compliance efforts.

Mr. DRINAN. Do you have any explanation for the very devastating GAO report that we received this morning? It showed that five complaints were filed in January 1975, and to date not even the first steps of investigation have been taken?

Mr. SCHMULTS. I can't comment on the detail in the GAO report because I did not hear it. But I glanced at their statement and did not think it was devastating. I was encouraged by parts of it that said, for example, that most governments do seem to respond and comply when alerted by the Office of Revenue Sharing about discriminatory practices.

As to the five cases, we are unsure about what cases the GAO is talking about. It is very difficult to respond to that precisely. We should be happy to do so for the record.

[The information referred to follows:]

OFFICE OF REVENUE SHARING, DEPARTMENT OF THE TREASURY

STATUS OF SELECTED CIVIL RIGHTS COMPLIANCE CASES

On October 8, 1975, during hearings before the Subcommittee on Civil Rights and Constitutional Rights, House Judiciary Committee, Congressmen Robert F. Drinan and John F. Seiberling asked about the status of five ORS Civil Rights cases. The cases appeared on a September 13, 1975, computer listing of active cases without a current status indicated.

Following is a brief status report on each:

Evanston, Illinois: ORS closed out this case in early September after being advised by EEOC that negotiations with the city through LEAA had been successful in seeking compliance.

State of Mississippi: On April 2, 1975, ORS was informed that discrimination suits were pending with the Justice Department. Possible revenue sharing violations were reviewed and action deferred to Justice.

Vermillion County, Illinois: The case was dismissed by the District Court on May 2, 1975.

Lincoln, Nebraska: Case is presently in Civil Rights Branch of ORS for analysis.

Albuquerque, New Mexico: Case based on EEOC Letter of Determination received by ORS on August 27, 1975. Civil Rights Branch is reviewing case of possible issuance of a 60-day letter based on EEOC's determination.

Mr. DRINAN. On page 10 you talk about local governments enforcing civil rights. Then you say that if we get a large compliance apparatus, it would mean a significant intrusion into the day-to-day operation of every State and local government in America.

Do you think that any rational, reasonable enforcement of civil rights can be an intrusion into the life of Americans?

Mr. SCHMULTS. Well, the form of the enforcement program is the key. The intrusion I am speaking of here is big brother in Washington looking over your shoulder.

Mr. DRINAN. Just answer the question, then. This is civil rights. It is not big brother. You have said that you don't want to have this—that it would be an intrusion. We as members of the legislature have to have a rational, reasonable approach where the rights of minorities are protected.

The evidence is overwhelming that the Office of Revenue Sharing has done a very poor job, probably worse than any other agency, and you say oh, this would be an intrusion.

Well, I am asking you to explain: What is an intrusion? If somebody comes to protect my civil rights, I never say he is an intruder.

Mr. SCHMULTS. We have confidence that most State and local government officials when informed of their obligations under the revenue sharing antidiscrimination provisions will seek to live up to those provisions. Local officials ought to redress problems working with their State officials and with the Federal Government to enforce the provisions.

Mr. DRINAN. That is against all of the evidence available to those who study municipal government. Discrimination on the basis of race and sex is predominant at the local level.

Mr. SCHMULTS. But it is changing. I think that you have to look and see what is happening. I would suggest that some of the old truths may

be changing. We think we have evidence that many state and local officials want to do their best to live up to the requirements of the revenue sharing law.

Mr. DRINAN. Can you claim any credit for the ORS?

Mr. SCHMULTS. Yes; through the educational effort that I mentioned in my statement. For literally thousands and thousands of governments, revenue sharing is the only Federal program that touches them.

They are being made aware of their civil rights responsibilities through this program. I think that is a very useful thing.

Mr. EDWARDS. Mr. Butler.

Mr. BUTLER. Do you have any plans to expand this educational aspect of your program?

Mr. SCHMULTS. I would let John Parker respond, but we certainly do.

Mr. PARKER. Yes, sir. We have the draft joint EEOC: ORS handbook that we provided the committee. We trust that with the comments we will be receiving from others outside the Government as well as within that it will be very useful as a tool, not just to the ORS but to EEOC and other Federal agencies in helping to communicate to State and local government officials on civil rights compliance.

Very often we are told that they hear only about how to do the wrong thing, that is, what is wrong with what someone else may have done. EEOC and ORS will pursue this very hard and work to make it useful. We are working, of course, with the conference activities of the civil rights groups as well as the State and local interest groups to be sure we are communicating and hearing from them in their own conferences.

We will be revising the "Civil Rights and General Revenue Sharing" booklet for wider distribution. We will also be revising the "Getting Involved" booklet and we will be making wide distribution of those. There are other activities but I think that illustrates at least the kind of activity.

Mr. BUTLER. With reference to the cooperative agreements, do you have any plans to expand those?

Mr. SCHMULTS. Yes, we do. We plan or hope to be able to sign similar agreements with the Department of Labor and the Office of Contract Compliance and other agencies. We see them being helpful to us and our being helpful to them.

Mr. BUTLER. This is rather a new program. Do you find that these are going to be useful in your civil rights compliance?

Mr. SCHMULTS. When taken in isolation—and that is what people tend to do here, they say the cooperative agreements don't work, that we rely too much on complaints, that the State auditing program isn't effective for civil rights compliance—but I think what is important to note is that cooperative agreements are being signed and over time will make an important contribution. There are bureaucratic problems in the Government. Bureaucracies do not move fast. It is a fact of life that it takes time to acquaint others in other organizations with your program, to improve cooperative efforts.

We see real benefits being achieved over time through these cooperative arrangements taken in conjunction with the array of other things that we are doing to enforce the civil rights provisions.

Mr. BUTLER. We had mention of the New Bern situation and also the city of Boston. Would you like to comment—or did you hear the testimony this morning—Mr. Drinan has a way of asking questions and then leaving but he asked us several times about why the revenue sharing funds were not withheld from the Boston fire department.

Would you comment on that?

Mr. PARKER. The Boston fire department was for some time the object of a suit by the Department of Justice. It is my understanding that their investigation preceded even the passage of the Revenue Sharing Act.

We were aware of that suit and I understand that the court has entered a consent decree in that case and that the fire department will be required to follow it; thus, I trust the discrimination problems they had are resolved.

Mr. BUTLER. It is the view of your department that satisfactory compliance has been arranged or you have prospective compliance you are satisfied with at the moment. Is that a fair statement?

Mr. PARKER. Yes, sir. I know Mr. Himmelman mentioned the idea that we should investigate every case in the country regardless of any other actions that are going on. On the other side of that coin is the limited resources we have had and always, to some degree, shall have. I believe that it would be a poor use of resources to try to duplicate what the Justice Department Civil Rights Division is doing.

I have great confidence in their ability to enforce the law. We have worked very closely with them and sometimes it has taken both their Division and our office to get speedy action. The opinion of our legal counsel, however, is that there is not a requirement, and I suppose the administrative judgment is that it is not a good use of resources, to duplicate what is already being done on behalf of the Federal Government through an effective mechanism.

Mr. BUTLER. With reference to the New Bern fire alarm boxes, have you had a chance since that testimony to check into that?

Mr. SCHMULTS. Our understanding is that the complaint on the fire alarm boxes was filed in late March or early April of this past year and a clarifying letter was received just this past August. This is in a very early stage of resolution.

Mr. BUTLER. The August is August 1975?

Mr. SCHMULTS. Yes.

Mr. EDWARDS. Proceed.

Mr. BUTLER. It is still in the unclosed category?

Mr. SCHMULTS. Yes, sir.

Mr. EDWARDS. Mr. Badillo?

Mr. BADILLO. This morning I read from the report that indicated that in fact the Boston case is on appeal to the U.S. Supreme Court. The district court ruled against the fire department. The court of appeals, the U.S. court of appeals, ruled against the fire department. My question is why have not the funds been cut off?

There was a ruling of the U.S. district court.

Mr. PARKER. I understand that you will be hearing from representatives from the Justice Department. They might be able to tell you more of the details of the case.

Mr. BADILLO. I am not asking you the legal questions. I am asking you questions that go toward your responsibility. I want to know at

what point will the Office of Revenue Sharing cut off funds. Have you made a policy decision about that?

Mr. PARKER. The point at which funds would be cut off as I understand the question, sir, is on the determination of a Federal court or an administrative law judge that funds should be cut off.

Mr. BADILLO. When the court of original jurisdiction makes a decision?

Mr. PARKER. That is right.

Mr. BADILLO. That would be the district court. Do you have those procedures in writing?

What I am getting at is that apparently the way it worked in the Boston case is that the Office of Revenue Sharing has taken the position that until the case is ultimately decided by the U.S. Supreme Court you would not do anything. It seems to me that when the court makes a final decision, that is the original court, not the U.S. Supreme Court, that ORS should act to terminate funds.

Mr. PARKER. The regulations on civil rights which we put out for comment this summer and which I trust will soon be put out in final form in the Federal Register provide specifically that in such a case as you are talking about, that the Treasury Department may convene administrative hearings for the purpose of cutting off funds.

Right now it is a matter of difference of opinion among counsel as to exactly what it takes, when the court itself has not determined to cut off funds.

Mr. BADILLO. When you have a finding by a Federal court, which the Justice Department has gotten in litigation, it seems to me you don't have to have another inquiry to find out whether this is valid. The court's decision should be binding. That regulation should be amended to provide that a ruling by the court should constitute sufficient action to cut off the funds.

Mr. SCHMULTS. It may be that the jurisdiction comes into compliance by living up to the consent decree.

Mr. BADILLO. Your present regulations do not clearly specify at which point in this whole process the office is going to take action.

I would like to get your reaction to an amendment to your regulations which would provide that where there is a ruling by a U.S. district court, funds are cut off at that point.

Mr. SCHMULTS. Well, I think the point that I made earlier is we would not want to do that as flatly as you have said because there might be a consent decree entered into with which the jurisdiction would comply. If there is a continuing violation we would expect to cut off funds.

Mr. BADILLO. A final order by a court is a final order. It is binding everywhere else until it is reversed. I don't understand this situation. I don't understand how a final order of the court is not binding on a Federal agency.

I have not heard of regulations in any agency that say that a final order by the court is not binding on that agency.

Mr. PARKER. The court did not order or determine that funds should be cut off.

Mr. BADILLO. The issue was discrimination. The court found that there was a violation of the civil rights law. This was a finding after a trial. When you have that finding, it seems to me you should cut

off. Obviously the court is not going to order you to cut off the funds in all cases. But if you have the finding of discrimination and you have it certified to your office that that was the finding of the court you should be able to take action.

Mr. BUTLER. If the gentleman would yield?

Mr. BADILLO. Certainly.

Mr. BUTLER. As I read section 122(c), the Attorney General has that very authority and having failed to do that in this instance I am not at all sure that the position of the Office of Revenue Sharing is not appropriate.

It is the Attorney General who is charged with enforcing.

Mr. BADILLO. There was no consent decree. It is on appeal to the U.S. Supreme Court.

Mr. SCHMULTS. We will have to look at that.

Mr. BADILLO. There was an extensive period of time there when there was no consent decree. Maybe you have one now.

It is my understanding that you want to have the Congress make clear and you are in favor of cutting off funds when a locality is not in compliance.

Mr. SCHMULTS. Where a case is referred to the Attorney General, to the Department of Justice, and he elects to enforce the antidiscrimination provisions or tries to stop the discriminatory practice through a court case, the selection of the remedies would be in the first instance for the Attorney General to decide and last, of course, for the court. Naturally, we would hope to be heard on this point.

It would not be true in every case that it would be felt that the most appropriate remedy would be to cut off revenue sharing funds. I would not be in favor of a flat rule where that worked automatically.

Mr. BADILLO. You are saying that if I bring a complaint against someone in New York and I chose to go the route of the Justice Department that therefore in fact, the Office of Revenue Sharing steps out of the situation.

When there is a finding by the district court, if I win a case, you are on judicial notice that discrimination took place. Whatever concurrent authority might exist in the Justice Department does not exculpate you from taking immediate action.

Mr. SCHMULTS. We would certainly not like to step out of the picture. We would work with the Justice Department and be heard on the remedies to be asked for—

Mr. BADILLO. Yes, but—

Mr. SCHMULTS. I think there would be cases where termination of funds might not be the appropriate remedy. The jurisdiction could sign a consent decree and we would want the funds to continue to flow in that case. The jurisdiction would be coming into compliance. We have achieved what we wanted.

Mr. BADILLO. That is a different story. If there is a consent decree, that is different. If there is a finding of the district court determining that there has been a violation, that is the point at which you should take action.

It has nothing to do with consent decrees.

Mr. SCHMULTS. I understand what you are saying.

Mr. BADILLO. I thank you. I think you understand but do you agree with me? [Laughter.]

Mr. SCHMULTS. There are many cases where I would agree with you. There are other cases——

Mr. BADILLO. In other words, you don't want to comply with the Federal district court.

Mr. SCHMULTS. If it addresses revenue sharing, I would think the answer to your question would be yes.

Mr. EDWARDS. Mr. Dodd?

Mr. DODD. If a consent decree is entered into then it becomes a moot question, but if someone appeals a district court decision, that can be construed as a disagreement by the losing party. At that point I am quite unclear as to your response to Mr. Badillo's question.

Do you feel that once a losing party at a district court level appeals a decision where the district court has found that jurisdiction to be in violation of the provisions of the statute, do you feel that revenue sharing should be cut off for that particular program in that community?

Mr. SCHMULTS. I would think that we would, in many cases, let it run through the appeal process. If we are moving into another entitlement period we have a further assurance procedure where we would not, based on that court finding, put out any more money.

Mr. DODD. Doesn't it seem to make a mockery of the whole thing?

I would not be worried about the violations if I were a mayor because appeals procedures can go on for years. Why worry? Let the program proceed and have my local counsel file the necessary petitions in court to appeal the case but continue the practice.

There does not seem to be any teeth in it.

Mr. SCHMULTS. Where the court has addressed the revenue-sharing problem, the Secretary may withhold payment of entitlement funds to a recipient government pending the entry of an affirmative action plan order. This assumes that a violation of the nondiscrimination provisions of the revenue-sharing law was alleged in a complaint before the court and the court finds that the recipient government has violated those provisions.

Where we have specific revenue sharing findings of discrimination by a district court even before the case ran through the appellate process, our regulations would make it clear that the Secretary may withhold funds.

Mr. DODD. May but not shall. Do you think there should be a shall?

Mr. SCHMULTS. There might be cases where you would not want to do that, where the harm caused to citizens in the community by withholding funds while the judicial process was running would be greater than the benefits obtained.

Mr. DODD. Could you cite to me a harm that could be any greater than the denial of fundamental rights to a group of people or an individual?

Mr. SCHMULTS. Measured that way discrimination against one individual is an extreme harm which is to be deplored. The example I am talking about would be where you are funding a hospital or a community center and the benefits were widely enjoyed by patients or persons coming into that hospital or center.

It might be that if there is a finding by a district court that there was discrimination in employment by a hospital of one employee, that you would elect not to withhold funds while the court process

was running. To do so would hurt the hospital, its patients, and the community. That is why we would be against a flat rule. We are not minimizing the harm of discrimination to one individual.

Mr. BUTLER. This discretion to cut off funds is a continuing one. If you negotiate with the locality and you are satisfied, then you can work with them. But if they are abusing the process, you have the discretion to cut them off at that moment.

Mr. SCHMULTS. At that moment we would go to an administrative hearing or refer the case to the Department of Justice for a court case so the community has its day in court.

Mr. BUTLER. But you do not waive that right by indulging the community in its effort to comply.

Mr. SCHMULTS. Our desire is not to penalize people but to achieve compliance. Where we feel there is a good faith effort by the community to correct the discriminatory practice, we will work with them in achieving that goal.

Mr. DODD. Let me quote to you, Mr. Schmuls, a section 504 of the Rehabilitation Act of 1973. It says:

No otherwise qualified handicapped individual in the United States as defined in section 6 shall solely by reason of his handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Do you consider revenue sharing to be Federal financial assistance?

Mr. SCHMULTS. Our lawyers have advised us that laws with similar references do not apply to revenue sharing. Revenue sharing is basically an "entitlement program" and the "Federal financial assistance" refers to a grant or application type program.

That is the legal advice we have received. Another example is the Hatch Act which we believe doesn't apply to all State and local employees whose activities are funded with revenue sharing funds.

If that sort of "Federal assistance" requirement applied to revenue sharing—

Mr. DODD. Isn't that splitting hairs? Obviously revenue sharing is in layman's language Federal financial assistance. You are talking about \$40 billion.

Mr. SCHMULTS. You can say splitting hairs but when Congress enacted this law, it spoke very clearly about restrictions, for example, about antidiscrimination. The program was billed as a "no strings" generalized assistance.

Where Congress intended a string or a restriction to be attached to revenue sharing, we think the restriction is specified in the law. If there is a desire to include that sort of provision, then Congress should consider doing it in the renewal legislation.

Mr. DODD. Would you comment on whether or not you think that it ought to be included since the handicapped are being discriminated in a variety of ways, not the least of which is hiring practices in local jurisdictions. Should we include or consider as a violation of basic rights under revenue sharing a prohibition against discriminating on the basis of handicapped status?

Mr. SCHMULTS. Well, first of all, I agree there should not be any discrimination against the handicapped. As to whether or not we want to include a provision in our bill, we would want to talk to the Department of Justice about that and see how broadly the provision

has been applied in other areas. There might be merit, but I would want to think about that.

We are concerned about attaching additional strings—although I don't want to put the law you refer to in the category of a mere "string." There are tremendous hosts of things that people would like to do with revenue sharing. My own view would be discrimination against the handicapped ought to enjoy a high priority on that list of things.

We are obviously concerned about not burdening State and local governments with too many requirements that will change the nature of the program. When you are talking about discrimination you are in a different category. I would be receptive to that, myself.

MR. EDWARDS. Mr. Seiberling?

MR. SEIBERLING. Father Drinan asked you about five complaints that were filed in January where the first steps of investigation allegedly have not yet been taken. I understand you were not sure which ones those would be. We have a list which was furnished by ORS that indicates that these are complaints with respect to the city of Lincoln, Nebr., Evanston, Ill., Albuquerque, N. Mex., the State of Mississippi, and Vermilion County, Ill. Does that help you any in answering the question?

MR. SCHMULTS. And your question is, what is taking so long?

MR. SEIBERLING. Why the delay?

MR. SCHMULTS. There are over 600 compliance cases of all sorts and to address the question of why one is taking longer than another is difficult to answer. We would be happy to provide answers for the cases you have mentioned, what is the status, and why it is taking so long.

MR. SEIBERLING. There is no status indicated in this report. My question is, why are they not even being investigated? Is it because you don't have enough staff to handle them or what?

MR. SCHMULTS. Certainly in part because we don't have enough staff. There is no question about that.

MR. SEIBERLING. When do you expect to add these five additional people? Will they help expedite any of these cases?

MR. SCHMULTS. We freely admit we don't have enough staff. I would like to add for the record without cutting into your time, sir, if I may, Mr. Chairman, a brief note here that on last April 30—let me go back a little further.

For fiscal 1975 we asked the Congress for 26 additional compliance people for the revenue sharing. We asked our Appropriations Committees. We got five. The next year, fiscal 1976, we asked for the 21 more compliance people. We got a total of 13 for the entire Office of Revenue Sharing and put 11 into compliance.

I went up to both Appropriations Committees' hearings especially to make a plea for more people in the compliance area.

I have the record in the Senate, for example, April 30, 1975. I said that we were seeking to develop cooperative programs with other governmental agencies who have civil rights resources and with State human rights agencies and State audit agencies. I urged:

To achieve compliance in that cooperative way, we simply must have a credible compliance program ourselves. I urge you and your committee to look very hard at our request in that area. We are asking for 21 new positions there. I can assure you that they are very important to us and the administration.

So you see we are on record that we would like to have more people in our compliance area.

Mr. EDWARDS. You got some but you did not put any of them in civil rights, did you?

Mr. SCHMULTS. Of the 11 people we are putting into compliance, 5 are going to be civil rights specialists, doubling our number from 5 to 10. There will be two additional clerical people as well. The emphasis recently has been to put more people in the compliance area. Initially, we were concerned about getting out the checks and the financial auditing. The emphasis is changing.

Mr. SEIBERLING. Thank you. I must say that I think we could be of help to you in getting appropriations increased. That is one of the values of having this kind of a hearing.

I am not trying to pin any blame on anybody. I am trying to find out what the problems are so we can move ahead on them.

You place great emphasis on the fact that you are working with State human rights agencies. What do you plan to do in the case of agencies that are very weak or nonexistent, because they are nonexistent in a lot of States?

What substitutes or alternatives do you plan to follow?

Mr. SCHMULTS. Well, we are hoping to increase our use of State agencies both in the investigative phase——

Mr. SEIBERLING. My question is——

Mr. SCHMULTS. Where they are weak, we think that the very fact that we are dealing with them will strengthen those agencies. When the State agencies go into local communities and these communities know that an investigation may result in a revenue sharing penalty in effect or a further investigation, this will strengthen the agencies' enforcement efforts.

We think the exchange of information—when we advise a State agency when we have learned from other sources that there may be discrimination in a community—will help strengthen the agency.

Mr. SEIBERLING. What about the States where there are not any agencies?

Mr. SCHMULTS. Well we will have to use other elements of our civil rights compliance efforts there. We have no plans ourselves to prod States in creating agencies. We think that this is a local matter that the State governments ought to address.

Mr. SEIBERLING. Do you intend to beef up your program in the States that don't have agencies, by relying on your audit programs?

Mr. SCHMULTS. We certainly do. In States where we feel the audit is not adequate, where we feel there is no State agency that can do a good job, yes, that would be an area where we would come in and tend to put more of our resources at work.

Mr. SEIBERLING. You think that but does the ORS have any plan to do that?

Mr. SCHMULTS. Yes.

Mr. SEIBERLING. You also say you are going to rely on State auditing systems. Do you have any plans to spot check the adequacy of these State auditing systems?

Mr. SCHMULTS. We do that now.

Mr. SEIBERLING. We had a report that there were 1,600 audits and only one of them indicated any possible civil rights violations. I am

wondering, in view of that fact and in view of the fact that there have been indications through the GAO audit and so forth that that is a much greater percentage of possible civil rights violations, how do you explain the discrepancy?

Do you feel this indicates that these audits are ineffective and if so, what do you plan to do about it?

Mr. SCHMULTS. We think the audits are effective for what they are designed to do primarily and that is a financial audit on where the money is going. They have not to date been terribly effective in determining civil rights violations. I think the number you cited is correct. But I don't think that is a fair indication of where we hope to go here.

Mr. SEIBERLING. It is not a fair indication of where I hope to go but what do you plan to do about it?

Mr. SCHMULTS. This audit information is helpful to our civil rights staff. We hope to educate the auditors and give them more civil rights questions to review at the State audit level to improve their civil rights review.

Mr. SEIBERLING. Do you plan to continue to use the audit guide despite the fact that both the U.S. Commission on Civil Rights and the Justice Department have found it to be grossly inadequate with respect to civil rights compliance auditing and if not, what do you plan to do about it?

Mr. PARKER. The audit guide will be revised as soon as we have new regulations out. I will also reflect action EEOC is taking in conjunction with us. EEOC is instructing its field offices to respond to auditors and give them information on charges they may have in the field, in their district and regional offices.

Mr. EDWARDS. Mr. Klee.

Mr. KLEE. Thank you, Mr. Chairman. Mr. Schmults, we have earlier referred to the "making up for past discrimination" regulation i.e. 31 CFR section 52.32(b) (4). I tried to elicit from another witness how this corresponds to the provision in section 122(a) that no person shall be denied the benefits of any revenue sharing program. I came across in the literature a statement of ORS legal counsel that a program setting up an Indian camp whereby only Indian children could attend would be a program legal within this "making up for past discrimination" regulation.

To the extent this type of a camp excluded whites, blacks and other children, does that violate the statutory provisions that no person shall be denied the benefits or excluded from a revenue sharing program?

Mr. SCHMULTS. It has been our advice that to use revenue sharing funds to address past discrimination practices is a legal use of that money.

Mr. KLEE. There are two ways to my understanding that affirmative action can be done. One, you can have programs where you go out and actively seek to recruit minority employees. That does not hurt whites. It still leaves open the ultimate employment decision that if you have two equally qualified people neither one is going to be given a preference.

The program you have approved under the regulation seems to run counter to the express language in section 122(a), that no person shall be excluded from any program.

Mr. SCHMULTS. It is difficult to talk about these things in the abstract.

But I think that where you have had discrimination in the past against Indian children and they have not been permitted to go to a school, a program can be designed that is entirely legal which puts revenue sharing funds into a school in such a manner that will primarily benefit Indian children and redress the past discrimination.

Mr. KLEE. In 10 years, will the white child who has not been allowed to go to the camp have an action because he has been discriminated against in 1975.

Mr. PARKER. We are very concerned about Indians and I think all of you know this is a complex area because of the different treaties with many of the tribes and nations.

If we converted that hypothetical case to any other ethnic, racial, or sexual group, I believe the answer we would give to your question is that we may not have separate-but-equal. If it requires, for example, paving only streets in the minority portion of the community a year or two in order to bring them up to the level whites have enjoyed for many years, the courts have specifically said that that is a permissible use.

I believe that, while it is hard to deal with hypothetical cases, there have been cases in the courts recently where this has been done.

Mr. KLEE. I would like to ask a question in the area of the burden of proof or the presumptions that are being put forth. Is it your position that a State or local government should be presumed not to discriminate until shown otherwise and/or, do you think that the burden should be on the other foot, if there is a complaint made, that the State should have the burden of proving it is nondiscriminating in order to avoid its funds being cut off?

Mr. SCHMULTS. The Director of the Office of Revenue Sharing in the first instance would make a determination that there has been discrimination. Then it would go to the next step. If we could not work out through the process of negotiation, the case would go to an administrative proceeding, or it would go to a court.

Presumably, you would have to show discrimination.

Mr. KLEE. In other words, the State would not be put in the position of having to rebut it. It would have to be proven by the person?

Mr. SCHMULTS. While I am a lawyer, we are now getting into an area where you can have patterns and employment statistics and other things. Perhaps the burdens can shift back and forth depending on the case.

Mr. KLEE. I am glad you brought up the questions of statistics because my next question deals with that area. Some of the circuits have taken the position that a mere racial imbalance or an imbalance on the basis of gender in employment is grounds for inferring discrimination.

In other circuits that is not the legal position. What is your position with regard to that? Do you think that merely because there is, for example, to use the gentleman from Connecticut's reference, a lack of handicapped people in the fire department in proportion to their representation in the population, that they have been discriminated against?

Mr. SCHMULTS. I have found in the past that quite frankly answering hypothetical questions like this without a full knowledge of the facts is a very hazardous process to go through.

But let me assure you that revenue sharing intends to follow the requirements of the law. When the law is not settled, maybe we would push to the resolution by a higher court. It is very difficult to respond to hypothetical questions in this area.

I think the answer might vary as you got into the facts.

Mr. KLEE. In the fourth circuit where bare statistics are evidence of discrimination, you could come down one way but in the third circuit you could come down another way.

Mr. SCHULTS. There ought to be one standard applicable to everybody throughout the country.

We ought to push for a determination of that standard by the highest tribunal in that case.

Mr. EDWARDS. Ms. McNair?

Ms. McNAIR. I just have a few questions. The first one deals with staffing. One of the facts that appears in your statement is that civil rights complaints amount to approximately one-third of the compliance complaints that you receive.

My question is why haven't you devoted one-third of the compliance staff to civil rights specialists?

Mr. PARKER. In fiscal year 1976 which we are in and I think addressing, we will have 13 persons working exclusively in civil rights.

Ms. McNAIR. So we won't have 10, we will have 13.

Mr. PARKER. Three clerical staff will be assigned.

Ms. McNAIR. In terms of investigators though you will have 10. Does that bring the compliance staff up to one-third to reflect at least the complaint rate?

Mr. PARKER. We will have 41 total staff in compliance; 13 will be exclusively on civil rights. I will have to check the ratio of professionals in the audit and the compliance side.

Ms. McNAIR. Could you furnish us with information on the ratio of civil rights versus other types of complaints and on staff proportions working on these various complaints?

Mr. PARKER. Certainly.

[The information referred to follows:]

OFFICE OF REVENUE SHARING, DEPARTMENT OF THE TREASURY—CURRENT AND PROJECTED STAFF WORKLOAD OF COMPLIANCE DIVISION (AS OF SEPT. 30, 1975)

	Activity	
	Civil rights	Audit
Professional staff.....	5.0	13.0
Active cases.....	145.0	127.0
Per professional.....	29.0	9.8
Closed cases.....	49.0	248.0
Per professional.....	9.8	19.1
Projected professional.....	10.0	16.0
Active cases each.....	14.5	8.0
Closed cases each.....	4.9	15.0

Ms. McNAIR. With respect to reliance on ORS non-civil-rights personnel, I would like to know how ORS can justify continuing to rely on its own program auditors when they themselves are developing a significant backlog with respect to other types of compliance complaints? Don't you find that there is something inappropriate about that kind of continued reliance when the workload for these other personnel is increasing?

Mr. PARKER. I agree very much with Mr. Schmults that any kind of backlog is disconcerting and disagreeable to us. We would like to reduce it by getting remedial action, not by hiding it.

Ms. McNAIR. I am concerned about the civil rights backlog and the effect of the other backlog on the civil rights enforcement.

Mr. PARKER. We have to expect our employees to do everything they can to bring about compliance with the act. Under our staffing circumstances, we will have to continue to expect our auditors to help in civil rights. I do not mean that they can do it all.

Ms. McNAIR. In the proposed nondiscrimination regulations, ORS suggests that it ought to be able to—not that it ought to but that it ought to be able to withhold payments after a finding of a Federal District Court, but that there has to be a specific allegation of a violation of the Revenue Sharing Act and a finding in fact that that act has been violated. Why do the proposed regulations read as such when in fact in the Chicago case, in the case where ORS was ordered to defer by the D.C. district court, that order was based on a Chicago court finding of a violation of 42 U.S.C. 1981 and title VII and not in violation of the Revenue Sharing Act.

Mr. PARKER. To answer your question specifically, we have discussed this question intensively with the counsel and the Treasury Department and that was the advice that we received as to what should be required.

Ms. McNAIR. Irrespective of the fact that in the only case where you have deferred funds, and been ordered to defer funds, that order does not have a finding of a specific violation of the Revenue Sharing Act?

Mr. PARKER. Were there other such cases, we would withhold under whichever terms this court ordered. The proposed regulations deal with instances where the court makes no order regarding the funds.

Ms. McNAIR. Were there an order such as the Boston order you would defer funds? Your regulations don't reflect it?

Mr. SCHMULTS. We thought our regulations filled a gap in our existing regulations. By having a specific regulation on this point, it would in a sense force complainants and the courts to address the revenue sharing issue.

Ms. McNAIR. Because those regulations are supposedly filling the gap reflected as a result of the Chicago case, I would assume that you would pursue drafting regulations that reflect the Chicago litigation.

Mr. SCHMULTS. The nongap, if you will, in the great majority of cases, we would think that the complaints and the court opinions would address the revenue-sharing statute. Hence there would be an order telling us to do something with revenue-sharing funds, either to terminate or withhold or order repayment or do something else.

Ms. McNAIR. But the Chicago court did not order you to terminate or withhold and therefore you took the position, I assume, that the D.C. district court then had to order you to defer. You must have a court order requiring you to defer payments before you defer, is that correct?

Mr. SCHMULTS. Or an order of an administrative tribunal.

Mr. PARKER. Maybe I missed the point there, but in Chicago, under the new regulations, had the court made no order, the Secretary would still have the authority to withhold funds.

Ms. McNAIR. Had there not been an order?

Mr. PARKER. Had there not been an order but had everything else been the same. We asked to amend revenue sharing into that court case.

Ms. McNAIR. They did amend but there was not a finding with respect to that allegation.

Mr. EDWARDS. Mr. Badillo?

Mr. BADILLO. Do you agree with the recommendation of the Comptroller General that in order to avoid the nontraceability problems that the nondiscrimination prohibition should apply to all activities of the recipient government.

Mr. SCHULTS. No, sir, we do not agree with that report. That is addressed in my statement on page 10. We have our reasons set forth there why we don't think that proposal is appropriate with respect to revenue sharing. First of all now—I can go through the answer, if you want, Mr. Badillo, but it is there.

We say the statute now provides very clearly about penalties only for a program or activity funded in whole or in part with shared revenues. We also note that in most of the independent studies—all of the studies that I have seen, no one has suggested that local governments are arbitrarily assigning moneys or setting up some charade to avoid the impact of the civil rights provisions of the law.

If Congress wants to make the explicit decision that every State and local program should receive a Federal civil rights scrutiny on an ongoing basis, it ought to do so in a separate statute, in part because we think there are a number of other agencies now, EEOC, the Department of Justice, HEW, and others, that have specific civil rights responsibilities and thousands of investigators to go out and look at various State and local programs.

In a sense such a congressional decision would be redundant.

Mr. EDWARDS. Also if you make your audit requirements strict enough and include that, that will be helpful, too. They apparently are not strict enough now.

Mr. SCHULTS. I think that would be helpful, Mr. Chairman.

Mr. EDWARDS. I hope I did not understand you right, Mr. Secretary, when you answered Ms. McNair by intimating almost explicitly that in the event a district court were to make a finding, that the funds were used in a discriminatory manner, that that would not necessarily trigger any action at all but that the court would have to make a finding and direct you to take action such as withholding funds before you would withhold funds.

You have never withheld funds except when one court said you must withhold funds, is that correct?

Mr. SCHULTS. That is correct.

Mr. EDWARDS. I thought from what you said earlier that there was a change in the wind. You are recommending in your regulations and to the Government Operations Committee that a threat will hang over some cities, that you might withhold funds one day?

Mr. SCHULTS. I think the answer to that is yes, but we maintain the position that that should be only after a due process hearing, either an administrative proceeding or a court hearing.

Mr. EDWARDS. Yes, but that is the situation now. You have the right to do it now but you don't.

Mr. SCHULTS. We have done so only in one case.

Mr. EDWARDS. Mr. Seiberling?

Mr. SEIBERLING. Mr. Chairman, thank you. I think there is a basic inconsistency in your position with respect to not making this general revenue sharing law apply to all programs of the Government which is a recipient of revenue sharing and the position that you do not want to have this enforcement program transferred to the Justice Department or some other department.

You say you don't have the staff and Justice and the EEOC have thousands of people enforcing the nondiscrimination laws. The problem we are faced with and the Congress is faced with is that the only place in the history where minorities have been able to get proper redress is on the national level in many cases because they are a minority in local governments and they would be ignored for all time unless they could somehow have a Federal level placed in their favor.

Now, general revenue sharing does a complete end run on that unless we have effective civil rights enforcement. It seems to me that you are going to have to take the position that either you are going to enforce the thing with respect to civil rights requirements with respect to all programs that are funded by a government receiving revenue sharing funds or that you are going to turn it over to somebody who will.

I don't see how you can get around the fact that the GAO brought out that it is too easy to evade the very general and vague restrictions we placed as to the categories the general revenue sharing funds could be used for. I would like you to comment on that general dilemma we are faced with.

I don't detect in your statement really any recognition of that being the problem.

Mr. SCHMULTS. It is our position that with respect to all programs funded in whole or in part with revenue sharing funds we ought to enforce the civil rights requirements. That's what Congress told us to do.

Mr. SEIBERLING. We are faced with changing the law.

Mr. SCHMULTS. What the GAO would have Congress do—is if revenue sharing funds go into a fire department in New Bern that revenue sharing compliance officers would look at every local program there, whether or not they receive revenue sharing funds. The argument advanced is funds are fungible. When you drop a Federal dollar in a local budget, a little bit goes to every local program. In our system of financial accountability where you have a unitary monetary system, there is some displacement effect—a freeing up of other local funds. This is true of any other Federal aid program, a categorical grant or a block grant.

I don't think "fungibility" is a good argument for concluding that we ought to set up a new and massive compliance effort in the Office of Revenue Sharing.

Mr. SEIBERLING. Why not turn it over to the people who already have that responsibility and let you stick to the accounting end of it?

Mr. SCHMULTS. Nobody else has the responsibility to look into every local program. There are others charged as we are with enforcing nondiscrimination in their specific programs. Revenue sharing extends to all governments. For example, there is no limitation on employees as with the law governing EEOC.

There is no authority to review every State and local program in any other Federal agency. This would require a new law by Congress to have Federal compliance officers go out and review every State and local program on an ongoing basis.

Mr. SEIBERLING. How do you get around the fact that the money can be siphoned around in order to minimize the necessity of compliance?

Mr. SCHULTS. The civil rights study groups and the reports that I have read have found no evidence of what you just said. That is a point I want to emphasize. At the Treasury Department and the Office of Revenue Sharing, we have seen that locally elected officials are not doing this.

Mr. SEIBERLING. OK.

Mr. DODD. Can we submit written questions?

Mr. EDWARDS. We have another hearing tomorrow morning at 9:30. Mr. Parker and Mr. Secretary, thank you very much.

This hearing stands in recess until tomorrow morning, Thursday, October 9, 1975, at 9:30 a.m.

Thank you, gentlemen.

[Whereupon, at 4:10 p.m., the subcommittee adjourned, to reconvene at 9:30 a.m., Thursday, October 9, 1975.]

[The following material was provided for the record:]

THE UNDER SECRETARY OF THE TREASURY,
Washington, D.C., September 29, 1975.

HON. DON EDWARDS,
*Chairman, Subcommittee on Civil and Constitutional Rights,
Committee on the Judiciary, House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your letter of September 11, 1975 to Secretary Simon, which posed several questions for use by the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary regarding the Office of Revenue Sharing's civil rights enforcement efforts. Our responses to your questions are set forth below.

1. *Question.* How many civil rights complaints have been received by the Office of Revenue Sharing since January 1, 1975?

a. Please describe each such complaint, the jurisdiction involved, and the current status of each complaint.

b. Please provide with your response a copy of the most recent Compliance Control Report, detailing the status of all complaints received by the Office of Revenue Sharing.

Answer. Since January 1, 1975, sixty-nine civil rights complaints have been received by the Office of Revenue Sharing. Please see Attachment A, titled "The Chronology of Active Cases" for the specifics of each case. The most recent Compliance Control Report is set forth in Attachment B. [Attachment B is retained in Subcommittee files.]

2. *Question.* How many civil rights compliance officers are currently employed by the Office of Revenue Sharing?

Answer. There are five civil rights officers currently employed by the Office of Revenue Sharing. An additional five positions have been allocated exclusively to civil rights compliance for fiscal year 1976, which will bring the total to 10 positions devoted fully to civil rights.

3. *Question.* Do each of the civil rights compliance officers employed by the Office of Revenue Sharing devote full-time to civil rights enforcement? If not, how many are full-time and how many are part-time?

Answer. Each of the civil rights compliance officers devotes full-time to civil rights enforcement. Additionally, other ORS personnel make important contributions to assuring civil rights compliance, including the Compliance Division's audit staff, consisting of 15 professionals, the Office of the Chief Counsel with 6 lawyers, and the Office of the Director. Further, the Intergovernmental Relations Division with 9 professional positions and the Public Affairs Manager play

an important role in informing recipient governments of their anti-discrimination responsibilities, as well as citizens of their rights.

Consistent with the philosophy of the revenue sharing program, the Office of Revenue Sharing supplements its own limited staff with resources already existing through agreements with the Justice Department, the Equal Employment Opportunity Commission, the Department of Health, Education, and Welfare, State human rights agencies, and State audit offices.

4. *Question.* In how many cases have you made an initial determination of non-compliance? Please provide the name and status of each case, the date on which the complaint was filed, and the date on which the determination letter was sent.

Answer. An initial determination of noncompliance with the Revenue Sharing Act has been made in sixty cases. Twenty-three determinations were for violation of the nondiscrimination provisions of the Act. See Attachment C for the additional information requested.

5. *Question.* In how many civil rights cases has the Office of Revenue Sharing instituted administrative proceedings for the purpose of determining violations and withholding funds? Please describe each such proceeding and its current status.

Answer. Once the Director of ORS makes an *ex parte* determination of non-compliance, we consider all subsequent actions to enforce the nondiscrimination provisions of the Act as administrative proceedings with regard to that recipient government. The aim of this process is whenever possible to achieve a settlement leading to remedial action that would ameliorate the effects of the discriminatory practices without resort to protracted litigation. We have not to date initiated any administrative hearings for the purpose of determining violations and withholding funds. As of today all of the civil rights cases in which a determination of noncompliance has been made are presently in the negotiation stage, have been settled on the basis that effective remedial action would be taken to overcome the discriminatory practices or have been referred to the Attorney General for civil action, pursuant to Section 122(b) (1) of the Act.

6. *Question.* How many cases has the Office of Revenue Sharing referred to the Attorney General, pursuant to the provisions of Section 122 of the Act?

Please describe each such case, the circumstances leading to the referral and the status of each case.

Answer. The Office of Revenue Sharing has referred cases pursuant to Section 122(b) (1) of the Act against the City of Chicago and the State of Michigan to the Attorney General with a recommendation that civil action be instituted. I will summarize each case as briefly as possible beginning with the Chicago case.

As a result of an LEAA investigation, the Justice Department filed a suit in the United States District Court for the Northern District of Illinois in August, 1973 against Chicago for alleged employment discrimination by the City's Police Department. In September, 1973, the Office of Revenue Sharing received a citizen's complaint alleging essentially the same facts regarding the discriminatory employment and promotional practices as cited in the Justice Department complaint. The citizen was Renault Robinson, a Chicago policeman and a plaintiff in a previously filed suit against Chicago. Mr Robinson's informal administrative complaint sought action by the Office of Revenue Sharing to end discrimination by Chicago's Police Department, including the immediate termination of revenue sharing payments to the City. When ORS declined to defer funds prior to the City having an opportunity to defend itself against the allegations of discrimination, Mr. Robinson sued ORS in the U.S. District Court for the District of Columbia in February, 1974.

At the request of the Civil Rights Division in November, 1973, all ORS efforts to seek a voluntary settlement with Chicago were coordinated with the Justice Department attorneys litigating the case against the City. The Office of Revenue Sharing was further advised that either an independent ORS negotiation with the City or the initiation of a formal administrative hearing could jeopardize the orderly progress of the pending litigation.

When efforts to reach a settlement were unsuccessful, ORS referred the case to the Attorney General in May, 1974, and his complaint was promptly amended to include an allegation that the City had violated Section 122 of the Revenue Sharing Act.

By virtue of an order of the U.S. District Court for the District of Columbia in December, 1974, that was affirmed by the District Court in Chicago in April 1975,

as of October 6, 1975 approximately 76 million dollars in revenue sharing payments will have been withheld from the City based on the judicial ruling that the Police Department was guilty of employment discrimination. A final decision is expected in the Chicago case in the next few months.

In February 1975, ORS recommended to the Attorney General that civil suit be instituted against the State of Michigan for violation of Section 122 of the Act. The Office of Revenue Sharing's action was based on a determination that the State was providing financial assistance with revenue sharing funds to the Ferndale School District which had been found to be illegally discriminating against minority students and teachers in an H.E.W. administrative proceeding that was affirmed by the Federal Courts. Specifically, ORS determined that the payment of revenue sharing funds by the State to the Public School Employees Retirement System on behalf of Ferndale School District employees was the type of assistance and support of a racially discriminatory program that is prohibited by the Act.

At the time of the referral, the Justice Department was seeking an acceptable desegregation plan pursuant to Title II of the Elementary and Secondary Education Amendments of 1974 from the Ferndale School District. When the School District failed to take an acceptable offer, suit was filed in the U.S. District Court for the Eastern District of Michigan in May, 1975, against the Ferndale School District and the State of Michigan for violation of Title II, the Revenue Sharing Act and the Fourteenth Amendment of the U.S. Constitution. The case is pending as of this time.

7. *Question.* How many cases are currently pending where complaints have been received but no determination of noncompliance or compliance has yet been made?

Answer. Our latest report dated August 31, 1975, indicates there were 198 cases in the pending stage, of which 120 are civil rights cases.

8. *Question.* Has the Office of Revenue Sharing developed standards on the basis of which it determines the appropriateness of an Attorney General referral?

Answer. The decision whether to refer a case to the Attorney General is dependent on the practicalities and the circumstances of each case. For example, in the two cases already referred the Justice Department had conducted an investigation and was proceeding accordingly. Principally for this reason referral was deemed appropriate. When future civil rights cases mature to the point that the ORS Director is required to exercise the enforcement options provided in Section 122(b) of the Act, a decision on the propriety of referral will be made in light of such standards as the extensiveness of the investigation required, the prior involvement of the Justice Department, and whether a civil suit is appropriate due to the presence of unique or important legal issues. The referral decision will often be made after consulting the Assistant Attorney General for Civil Rights.

9. *Question.* In how many cases has the Office of Revenue Sharing withheld payments from a recipient jurisdiction as a result of a civil rights violation or complaint?

Please describe each such instance and the circumstances leading to the withholding or deferral of funds.

Answer. The Chicago case is the only one in which payments have been withheld as a result of a civil rights violation or complaint.

10. *Question.* Please provide us with a copy of your most recent draft of the equal employment opportunity and government services anti-bias guidelines which the Office of Revenue Sharing is currently developing jointly with the Equal Employment Opportunity Commission.

Answer. The EEOC and the Office of Revenue Sharing have received for review a 148 page draft manuscript from a private consultant firm under contract to the Office of Revenue Sharing. It is intended that the manuscript ultimately will result in a handbook providing helpful and practical guidance to State and local government officials. The work is to be distinguished from "guidelines" which have legal and regulatory significance. The draft remains the property of the consultant and has not been accepted by either EEOC or ORS. A copy is furnished to the Subcommittee for information purposes only as Attachment D and with the understanding that the manuscript is a draft and subject to change by either agency. The draft does not represent at this time the official views of ORS or EEOC. Please note that changes are anticipated due to the comments ORS will solicit from prominent civil rights organizations and other interest groups. [Attachment D is retained in the Subcommittee files.]

11. *Question.* Since its signing of the coordination agreement with the Equal Employment Opportunity Commission in the fall of last year, has the Office of Revenue Sharing conducted a systematic review of EEO-4 forms of recipient jurisdictions for the purpose of locating employment discrimination. If so, how many forms have been reviewed as part of the process, and how many instances of discrimination or potential discrimination have been located? When will a complete statistical analysis of those forms be available and what action are you planning to take against recipient governments identified as violators?

Answer. The Office of Revenue Sharing has obtained computer tape records of data collected via the EEO-4 form for the year 1973. By means of computerized processing procedures, those GRS recipient jurisdictions who submitted EEO-4 forms in 1973 were identified. Computer assisted methods for identifying patterns of employment discrimination are under development. The computer system is designed to utilize the statistics on the employment status for female and minority groups reported on the EEO-4 forms in conjunction with labor force data originating from the 1970 Census to compare and measure disparities in work-force representation.

To accomplish necessary testing and validating of methodology and computer procedures, the EEO-4 data for 600 recipient jurisdictions within six states have been processed. The ultimate set of procedures to be used in identification of potential discrimination candidates will evolve from current evaluations based on the above sample. The employment data for females and minorities of all GRS recipient jurisdictions required to file EEO-4 forms annually (approximately 4,400) will be analyzed on the basis of selected indicators for identifying situations where discriminatory practices may exist. This is expected to be completed by mid-November following satisfactory evaluation of proposed methodology and after ORS has properly validated techniques and is assured of data availability, adequacy and currency. Instances of potential discrimination resulting from computer analysis will be incorporated into the workload of the ORS Compliance Division for review, investigation and appropriate action.

12. *Question.* What recommendations have been made for improvement of the Office of Revenue Sharing's civil rights compliance processes as a result of the past month's internal review of the Office of Revenue Sharing initiated by Under Secretary Edward C. Schmults? Please provide copies of last year's Treasury review.

Answer. The final report on the internal review has not yet been drafted. The report including its recommendations will be forwarded to you as soon as it can be completed. The report based on last year's Treasury Department management review is Attachment E to this letter. [Attachment E is retained in the Subcommittee files.]

13. *Question.* It has come to our attention that the Office of Revenue Sharing may be implementing new assurance procedures for jurisdictions where civil rights problems exist. Please describe this new procedure and the manner in which jurisdictions are chosen for its application. Why have the new augmented assurance procedures not been included in the new proposed regulations?

Answer. the ORS's regulations have always required recipient governments to provide the Secretary with an assurance that all programs and activities funded in whole or in part with revenue sharing funds will be conducted in compliance with Section 122 of the Act prior to each entitlement period. This condition to receiving revenue sharing funds had been set forth in Section 51.32(e) of the original regulations (31 CFR Part 51), and it has been included in a more detailed form in Section 51.55 of the recently amended civil rights regulations.

The assurance procedure has been revised for all recipients for which there is a violation determination letter outstanding at the time of the first payment of an entitlement period. Subject governments are required to submit more detailed assurances of compliance than are required of other governments. The administrative procedures and standards for the augmented assurances are detailed in ORS Technical Memorandum No. 75-4. (See Attachment F).

14. *Question.* On what basis does the Office of Revenue Sharing justify its refusal to institute administrative termination proceedings concurrently with any Justice referral that is made, or any court suit already in progress?

Answer. It is not the ORS's policy to flatly rule out instituting an administrative hearing concurrent with a civil action by the Justice Department for violation of the Revenue Sharing Act. In fact, the recently amended civil rights regulations specifically provided in Section 51.59(d) (31 CFR Pt. 51) that an administrative action may be initiated even though the Attorney General has commenced civil action under Section 122(c) of the Act whenever the Secretary, after

consulting with the Attorney General, believes that this is appropriate to insure compliance.

The ORS's policy is to refrain from exercising this authority when the administrative hearing would only involve the same set of facts and legal issues as the civil action initiated by the Justice Department. This situation prevailed in the Buffalo case, for example, where the citizen's administrative complaint filed with ORS alleged the same violations of the Act as the complaint filed in the U.S. District Court by the Justice Department. In these circumstances, instituting a concurrent administrative proceeding was deemed to be an unnecessary duplicative effort. Should a case arise where ORS has made a determination of noncompliance on issues that differ from a civil action initiated by the Justice Department, the Attorney General will be consulted as to propriety of instituting a concurrent administrative hearing on the divergent issues.

15. *Question.* Why has the Office of Revenue Sharing not taken any action to initiate hearings and withhold state funds from *all* school systems that have been identified by the Department of Health, Education, and Welfare and Federal courts as being in violation of school desegregation standards?

Answer. The Office of Revenue Sharing has referred to the Justice Department and litigation is currently in progress with respect to the use of general revenue sharing funds by the State of Michigan to benefit the Ferndale (Michigan) City School District, the *only public school system* currently identified by the Department of Health, Education, and Welfare as being determined to be in violation of school desegregation standards for final termination purposes after completion of procedures under Title VI of the Civil Rights Act of 1964. Two institutions of higher education so identified are both private sectarian schools that have not been funded with revenue sharing funds.

The Department of Health, Education, and Welfare informs us that all 62 school systems listed on its most current cumulative "Status of Title VI Compliance Inter-Agency Report" are considered by them to be in violation of their school desegregation standards. However, only the one mentioned above is finally determined to be in violation for final termination purposes.

I am looking forward to testifying before the Subcommittee on the important issues involved in the Office of Revenue Sharing's civil rights enforcement program. Please advise me if I can be of further assistance.

Sincerely yours,

EDWARD C. SCHMULTS.

Enclosures.

ATTACHMENT A: THE CHRONOLOGY OF ACTIVE CASES

"The Chronology of Active Cases" divides all cases into two groups: Civil Rights and Audit Branches. Each case includes the following data:

Date Received by ORS (file number) State
Account Number _____ *Name of Recipient Government*
Current Status

Blank means no status determination has been made, pre 15 day letter, *15 day letter* out indicates that the investigation of allegations has begun.

Analysis indicates the government's reply is being analyzed.

Ready for Review means that analysis shows a need for a field audit and/or civil rights review.

Field Review Scheduled.

Field Review Completed.

Letters of Noncompliance means formal notice of noncompliance, usually requiring action in 60 days or less.

Plan for Resolution indicates that the recipient government and ORS have informally agreed on a plan to close the case.

The problem areas are listed to the right of each case. Note that only active cases appear on this list.

Thus

01-09-75 (00001) Indiana

15 2 045 005 *Gary City*

Current Status: Analysis.

Employment: Nat. Origin.
which translates to:

ORS received, on January 9, 1975, an allegation of discrimination in public employment on the basis of national origin against the city of Gary, Indiana. It is the first case against Gary (file 00001). A 15 day letter has been sent to the Mayor of Gary and ORS has received a reply. That reply is currently under analysis.

CHRONOLOGY—LIST OF ACTIVE CASES: CIVIL RIGHTS

Date, account, and case numbers	State and recipient government	Current status	Basis of complaint
Jan. 9, 1975 (00001), 15-2-045-005.....	Indiana: Gary City.....	Analysis.....	Employments national origin.
Jan. 10, 1975 (00002), 28-2-055-007.....	Nebraska: Lincoln City.....		Employment and services: race.
Jan. 10, 1975 (00001), 48-2-014-008.....	Washington: Westport Town.....	15-day letter out.....	Employment: sex.
Jan. 21, 1975 (00001), 14-2-01-027.....	Illinois: Evanston City.....		Employment: race.
Jan. 21, 1975 (00001), 14-2-000-000.....	Louisiana: Earth Town.....	Letters of noncompliance.	
Jan. 22, 1975 (00001), 32-2-001-001.....	New Mexico: Albuquerque City.....		Employment: sex.
Jan. 22, 1975 (00001), 41-1-042-042.....	South Carolina: Spartanburg County.....	Review completed.....	Employment: sex.
Jan. 20, 1975 (00001), 25.....	Mississippi: State of Mississippi.....		Facilities: race.
Jan. 27, 1975 (00001), 14-1-092-092.....	Illinois: Vermilion County.....		Employment: race; facilities: sex.
Jan. 27, 1975 (00001), 33-2-060-014.....	New York: New Rochelle City.....	15-day letter out.....	Employment: race.
Jan. 28, 1975 (00001), 26-1-095-095.....	Missouri: St. Louis County.....	Analysis.....	Facilities: sex.
Jan. 29, 1975 (00002), 22-2-013-001.....	Massachusetts: Boston City.....	15-day letter out.....	Employment: race.
Feb. 6, 1975 (00001), 05-2-019-027.....	California: Los Angeles City.....	Analysis.....	Services: national origin.
Feb. 6, 1975 (00001), 44.....	Texas: State of Texas.....	Letters of noncompliance.	Employment: race, sex, national origin.
Feb. 18, 1975 (00001), 23-2-078-008.....	Michigan: Owosso City.....	Ready for review.....	Employment: sex.
Feb. 20, 1975 (00001), 33-2-008-001.....	New York: Elmira City.....	Analysis.....	Employment: sex.
Feb. 21, 1975 (00001), 25-2-022-001.....	Mississippi: Grenada City.....	Review completed.....	Employment and services: race.
Feb. 21, 1975 (00001), 50-2-030-001.....	Wisconsin: Kenosha City.....	15-day letter out.....	Employment: race.
Feb. 27, 1975 (00001), 39-2-0-3-028.....	Pennsylvania: Yeaton Borough.....	15-day letter out.....	Services and facilities: race.
Feb. 24, 1975 (00001), 25-2-012-002.....	Mississippi: Pachula Town.....	Analysis.....	Facilities: sex.
Mar. 3, 1975 (00001), 31-3-003-010.....	New Jersey: Williamsboro Township.....		Employment: race.
Mar. 1, 1975 (00001), 14-2-068-016.....	Illinois: Wagoner Village.....	Analysis.....	Employment: race.
Mar. 14, 1975 (00001), 15-2-049-000.....	Indiana: Indianapolis City.....	Analysis.....	Employment: race.
Mar. 14, 1975 (00002), 14-1-241-041.....	Texas: Wichita County.....		Employment: race.
Mar. 20, 1975 (00001), 14-2-002-001.....	Illinois: Cairo City.....	Analysis.....	Employment: race.
Mar. 24, 1975 (00001), 14-2-243-004.....	Texas: Wichita Falls City.....	Analysis.....	Employment and services: race.
Mar. 21, 1975 (00001), 23-2-062-004.....	Michigan: Detroit City.....		Employment: race.
Mar. 21, 1975 (00001), 14-1-003-003.....	Washington: Benton County.....	Analysis.....	Employment: race, sex.
Mar. 24, 1975 (00001), 04-2-014-004.....	Arkansas: West Memphis City.....	Analysis.....	Employment: race.
Mar. 27, 1975 (00001), 04-2-026-001.....	Arkansas: Hot Springs City.....	Analysis.....	Employment: race.
Mar. 27, 1975 (00001), 22-2-012-001.....	Massachusetts: Brockton City.....		Employment: national origin.
Mar. 27, 1975 (00001), 24-1-062-062.....	Minnesota: Ramsey County.....		Employment: race.
Mar. 27, 1975 (00001), 25-2-001-001.....	Mississippi: Ethel Town.....	Analysis.....	Services: race.
Mar. 28, 1975 (00001), 01-1-061-002.....	Alabama: Childersburg Town.....	15-day letter out.....	Employment and services: race.
Mar. 31, 1975 (00001), 3-12-032-001.....	North Carolina: Durham City.....	Analysis.....	Employment: race, sex.
Mar. 3, 1975 (00001), 44-1-111-001.....	Texas: Crockett City.....		Facilities: race.
Apr. 3, 1975 (00001), 07-3-002-016.....	Connecticut: Newington Town.....	15-day letter out.....	Employment: race, sex.
Apr. 3, 1975 (00002), 44-2-152-002.....	Texas: Lubbock City.....		Employment: race.
Apr. 4, 1975 (00001), 07-3-002-001.....	Connecticut: East Hartford Town.....	Analysis.....	Employment: race, national origin.
Apr. 14, 1975 (00001), 07-3-002-011.....	Connecticut: Glastonbury Town.....	Analysis.....	Employment: race, sex; services: race, sex; contracts: race.
Apr. 11, 1975 (05001), 32-1-001-001.....	New Mexico: Bernalillo County.....	Analysis.....	Employments: national origin.
Apr. 21, 1975 (00001), 4-2-017-024.....	Washington: Tukwila City.....		Employment: sex.
Apr. 28, 1975 (00001), 47-2-004-001.....	Virginia: Front Royal Town.....		Services: race.
Apr. 30, 1975 (00001), 44-1-000-113.....	Texas: Houston County.....	Ready for review.....	Employment: race; facilities: sex.
May 14, 1975 (00001), 04-2-047-009.....	Arkansas: Osceola City.....	Analysis.....	Employment: race.
May 15, 1975 (00001), 44-2-011-002.....	Texas: Elgin City.....		Facilities: sex.
May 19, 1975 (00001), 04-1-047-047.....	Arkansas: Mississippi County.....	Analysis.....	Employment: race.
May 19, 1975 (00001), 04-2-047-001.....	Arkansas: Blytheville City.....	Analysis.....	Employment: race.
May 22, 1975 (00001), 18-2-056-014.....	Kentucky: Louisville City.....	Analysis.....	Employment: race.
May 27, 1975 (00001), 25-2-013-001.....	Mississippi: West Point City.....	Analysis.....	Facilities: sex.
May 27, 1975 (00001), 41.....	South Carolina: State of.....		Services: race.
May 27, 1975 (00001), 49-1-031-031.....	West Virginia: Monongalia County.....	15-day letter out.....	Employment: race.
May 29, 1975 (00001), 25-2-075-001.....	Mississippi: Vicksburg City.....	Analysis.....	Employment: race.

CHRONOLOGY—LIST OF ACTIVE CASES: CIVIL RIGHTS—Continued

Date, account, and case numbers	State and recipient government	Current status	Basis of complaint
May 29, 1975 (00001), 34-1-066-066	North Carolina: Northampton County		Facilities: sex.
May 30, 1975 (00001), 34-2-014-003	North Carolina: Claremont Town		Services: race.
June 2, 1975 (00001), 10-2-029-009	Florida: Tampa City	Analysis	Employment: race, sex.
June 5, 1975 (00001), 26-2-095-049	Missouri: Hillsdale Village		Employment: race.
June 5, 1975 (00002), 44-2-101-008	Texas: Houston City	Analysis	Employment: race, sex.
June 6, 1975 (00002), 10-1-011-011	Florida: Collier County		Employment: Sex.
June 9, 1975 (00001), 04-2-070-002	Arkansas: El Dorado City		Employment and services: race.
June 12, 1975 (00001), 07-3-002-024	Connecticut: Wethersfield Town	Analysis	Employment: race.
June 13, 1975 (00001), 41-1-007-007	South Carolina: Beaufort County	Analysis	Employment: race.
June 16, 1975 (00001), 44-2-221-001	Texas: Abilene City		Facilities: race.
June 17, 1975 (00001), 22-2-007-002	Massachusetts: Holyoke City	Analysis	Employment: race, national origin.
June 20, 1975 (00001), 10-1-004-004	Florida: Bradford County		Employment: race.
June 25, 1975 (00001), 09-2-066-002	West Virginia: Huntington City	Analysis	Employment: race.
July 7, 1975 (00002), 07-1	Connecticut: State of Connecticut		Employment: race.
July 10, 1975 (00001), 05-2-007-009	California: Richmond City		Employment: race.
Aug. 18, 1975 (00001), 10-2-028-004	Florida: Sebring City	Analysis	Facilities: race, sex.

ATTACHMENT C

INITIAL DETERMINATIONS OF NONCOMPLIANCE

Recipient	Status	Opened	Determination sent
Prichard, Ala.	Letter, noncompliance	Oct. 11, 1973	Sept. 9, 1974.
Contra Costa, Calif. ¹	Review completed	Aug. 22, 1974	Aug. 5, 1975.
Santa Clara County, Calif.	Closed	Dec. 6, 1973	Oct. 21, 1974.
San Jose, Calif. ¹	Letter, noncompliance	Aug. 19, 1974	Aug. 6, 1975.
Oakland, Calif. ¹	do	July 1, 1974	July 31, 1974.
Torrington, Conn.	Closed	Apr. 9, 1974	Mar. 7, 1974.
Waterbury, Conn. ¹	Letter, noncompliance	Apr. 18, 1974	Nov. 11, 1974.
Dover, Del.	Closed	Sept. 5, 1973	Nov. 16, 1973.
Miami Fla. ¹	Review scheduled	July 23, 1974	July 17, 1974.
Wewahatchka, Fla.	Closed	Feb. 7, 1974	May 1, 1974.
Gretna, Fla.	do		Aug. 13, 1974.
Seminole, Fla.	do	Nov. 20, 1974	Nov. 20, 1974.
Alton, Ill. ¹	do	Feb. 6, 1973	Aug. 25, 1974.
Centralia, Ill. ¹	Plan for resolution	Apr. 4, 1973	July 30, 1974.
Chicago, Ill. ¹	Litigation	Sept. 17, 1973	Apr. 9, 1974.
Leyden, Ill.	Closed	Feb. 17, 1974	July 1, 1974.
Pembroke, Ill.	do	Aug. 9, 1974	Jan. 21, 1975.
Limestone, Ill.	do	July 23, 1974	July 23, 1974.
Palatine, Ill.	do	Feb. 7, 1974	July 22, 1974.
Bond County, Ill. ¹	do	Oct. 30, 1973	Aug. 20, 1974.
Lake County, Ind. ¹	Letter, noncompliance	Dec. 18, 1973	Dec. 30, 1974.
Ottawa County, Kans.	Closed	Oct. 30, 1973	Mar. 21, 1974.
Johnson County, Ky.	do	May 8, 1974	May 8, 1974.
Pike County, Ky.			Aug. 30, 1974.
Todd County, Ky.	Closed	December 1973	May 20, 1974.
Morgan County, Ky.	do	Dec. 3, 1973	Apr. 30, 1974.
Edmondson County, Ky.	do	Oct. 21, 1974	Oct. 21, 1974.
Ouachita, La. ¹	do	Apr. 30, 1974	Aug. 23, 1974.
Bogalusa, La. ¹	Letter, noncompliance	Nov. 16, 1973	Mar. 25, 1975.
Bladensburg, Md. ¹	Closed	Feb. 26, 1974	Aug. 27, 1974.
State of Michigan ¹	Litigation	Oct. 18, 1974	Nov. 14, 1974.
Lower Sioux, Minn.	Administrative hearing	May 13, 1974	Aug. 27, 1974.
Anniston, Mo.	Closed		Aug. 26, 1974.
Montclair, N.J. ¹	do		Aug. 6, 1974.
Charleston, N.Y.	Letter, noncompliance	Aug. 26, 1974	Dec. 27, 1974.
Craven County, N.C. ¹	Closed	Apr. 24, 1974	June 11, 1974.
New Bern, N.C. ¹	do		June 18, 1974.
Turtle Mountain, N. Dak.	Review completed	December 1973	Aug. 27, 1974.
Wagoner County, Okla.	Closed		Dec. 30, 1974.
Carbondale, Pa.	Analysis	November 1974	Sept. 15, 1975.
Scranton, Pa.	Letter, noncompliance	July 29, 1975	July 29, 1975.
Fulton County, Pa.	do		Jan. 22, 1975.
Ponca, Okla.	Closed	Aug. 1, 1974	Dec. 23, 1974.
Dimock, S. Dak.	do		May 20, 1974.

ATTACHMENT C—Continued

INITIAL DETERMINATIONS OF NONCOMPLIANCE—Continued

Recipient	Status	Opened	Determination sent
Worthing, S. Oak.....	Closed.....		Apr. 15, 1974.
Rosebud Sioux, S. Oak.....	do.....	Nov. 26, 1973.....	Nov. 20, 1974.
Beaumont, Tex.†.....	do.....		Jan. 4, 1974.
Breckenridge, Tex.†.....	do.....	Feb. 11, 1974.....	May 1974.
East Tawakoni, Tex.....	do.....		July 9, 1974.
Henderson, Tex.....	do.....	June 1973.....	July 26, 1974.
Normangee, Tex.....	do.....	July 1973.....	May 24, 1974.
Amarillo, Tex.†.....	Letter, noncompliance.....	Oct. 30, 1973.....	July 9, 1975.
San Antonio, Tex.....	Closed.....	Mar. 4, 1974.....	Apr. 29, 1974.
Gatesville, Tex.†.....	do.....	April 1974.....	June 10, 1974.
Waller County, Tex.....	do.....	June 11, 1974.....	Sept. 10, 1974.
Holland, Tex.....	do.....		July 26, 1974.
Powhatan County, Pa.....	do.....		July 25, 1974.
Virginia Beach, Va.....	do.....		Nov. 5, 1974.
Pine Bluffs, Wyo.....			May 5, 1974.
Laramie, Wyo.....	Letter, noncompliance.....	Feb. 28, 1974.....	Oct.

† Civil rights discrimination case.

ATTACHMENT F: TECHNICAL MEMORANDUM ON ASSURANCES

TECHNICAL MEMORANDUM: NO. 75-4

When Cancelled

June 16, 1975.

Subject: Assurance Requirement for Recipient Governments.

Section 51.10(b) of the regulations requires the chief executive officer of each recipient government to execute certain assurances, to the satisfaction of the Director in order to qualify for payment of funds for each entitlement period. This technical memorandum sets forth in detail the procedure for determining the type of assurance that is necessary, the effect of an inadequate assurance, and the procedure for processing assurances for purposes of making or not making payments.

The following rules govern the assurance requirement:

1. No recipient government will be paid for any entitlement period if the Director has not been assured to his satisfaction at the time of payment that the recipient government has the intention and capability to comply with the restrictions and prohibitions of the Act and regulations with respect to the forthcoming entitlement period funds.

2. Final acceptance of an assurance will be evidenced only by the act of payment.

3. A recipient government is "paid" when, pursuant to the definition of that word in TM 73-1, the recipient government's "... check is deposited in the mail. A check is deposited in the mail when it is bagged for mailing and nothing further remains to be done except pickup by the Postal Service trucks."

4. Any recipient government for which there is an unresolved violation determination letter outstanding prior to the first payment of an entitlement period will not be paid until a satisfactory assurance responsive to the violation determination letter has been received.

5. An assurance is responsive to a violation determination letter when evidence is presented to the Director's satisfaction that the forthcoming entitlement period funds will be used in a manner which will not result in a violation that is similar to the violation that resulted from the use of previously received funds.

6. No assurance is finally accepted until the first payment of an entitlement period is made to the particular recipient government. However, a recipient government may be given interim notice at any point in time prior to payment that its assurance *at that specific time* is acceptable. If a violation determination letter is sent to a recipient government between the interim acceptance and

payment, that recipient government must provide additional assurance evidence which is acceptable to the Director before it can be paid.

7. Once a recipient government has been paid for the first quarter of any entitlement period the acceptance is final for that entitlement period unless:

(a) Evidence of an intentional misrepresentation by the chief executive officer satisfies the Director that the assurance should be negated; or

(b) A recipient government which has made a special assurance does not subsequently commit the funds to the agencies or programs which were the subjects of that assurance. In that case, additional assurances will be required concerning the other agencies or programs which actually will receive the funds before further payments for the applicable entitlement period will be made.

Absent these two situations the recipient government will be paid unless funds are withheld pursuant to an action other than requiring special assurances for the entire entitlement period, and violation determination letters issued after the initial payment will not affect the adequacy of the assurance. Such subsequent violation determination letters, if unresolved prior to the mailing of the Planned Use Reports for the next beginning entitlement period, will require a responsive assurance acceptable to the Director in order for the recipient government to receive payment for that entitlement period.

8. A recipient government which has had its first quarter payment delayed for reasons not relating to an assurance requirement, and which receives a violation determination letter after the other recipient governments have been paid (but before it has been paid) will be required to execute an assurance to the satisfaction of the Director that is responsive to that violation determination letter before it is paid.

9. A recipient government for which there is not an unresolved violation determination letter outstanding at the time of mailing the PURs (or on May 15, 1975, for the 6th Entitlement Period) will only be required to execute the standard assurance contained on the PUR by signature of the chief executive officer. If a violation determination letter is subsequently issued against such a recipient government prior to the first quarter payment, a responsive assurance will be required before payment for the applicable entitlement period can be made. A recipient government for which there is an outstanding unresolved violation letter at the time of mailing the PURs (or on May 15, 1975, for the 6th Entitlement Period) will be required to execute, through its chief executive officer, the assurance on the PUR and submit additional assurances and evidence to the Director which are responsive to the violation determination letter.

10. Any recipient government which has had an assurance, other than the standard assurance on the PUR, rejected by the Director will be given notice and opportunity for hearing concerning the sufficiency of the Director's rejection.

ACTION

Manager, Compliance

1. At the time the PURs are mailed the Compliance Manager shall submit letters to the Director which will notify those recipient governments, which have been issued a violation determination letter that is unresolved at that time, that the Director must have specific assurances and related evidence before payment can be made. The Compliance Manager will prepare additional letters of this type for the Director's signature for all recipient governments which are subsequently issued a violation determination letter up to the time of payment for those governments. All specialized assurance letters will include a carbon copy for the Manager of Systems and Operations.

2. Prepare a letter to each Governor within whose State a special assurance letter will be sent to a recipient government under paragraph 1. These letters will request the Governor's review and comment on the additional evidence required and on the reliability of the assurance of the jurisdiction, enclosing a copy of the letter to the affected jurisdiction.

3. As Planned Use Reports are received from the affected jurisdictions, enter on the acceptance card provided by Systems and Operations for this purpose, the notation "Accepted Subject to Director, Office of Revenue Sharing letter dated _____." Upon entering of such notation, insert a copy in the compliance folder for that jurisdiction and mail the card.

4. As responses are received to the Director's letters, review the response and provide through the Deputy Director to the Director, recommendations as to further action together with a letter reply to the jurisdiction. Letters rejecting a special assurance will state the reasons therefore, additional evidence required, and notice of opportunity for a hearing on the sufficiency of the rejection. All replies are to be reviewed by the Chief Counsel prior to submittal.

5. By COB each Friday, provide the Director and Deputy Director a list of affected jurisdictions including a notation indicating the date of the jurisdiction's response and the date of Director's acceptance of the assurance, if accepted. Provide a copy of this list to the Chief Counsel and the Managers of Systems and Operations, Intergovernmental Relations, and Public Affairs.

6. Notify the Manager of Systems and Operations when each affected recipient government has submitted a specialized assurance to the satisfaction of the Director. Attach to this notice a copy of the Director's acceptance letter to the recipient government. With respect to recipient governments which are issued an acceptance letter after the scheduled payment date, the Compliance Manager will include with such notice an adjustment work sheet.

Manager, Systems and Operations

Do not issue an unqualified acceptance card based on a completed PUR for any jurisdiction for which there is an outstanding specialized assurance requirement. Instead, provide a copy of the Planned Use Report to Manager, Compliance, together with an acceptance card so that he may make the appropriate notation on the card and mail it.

2. Include and retain all jurisdictions required to execute a special assurance in a "No Pay" status for the applicable entitlement period until notified by the Manager, Compliance that the recipient government's special assurances have been accepted by the Director. Upon receipt of such notification (accompanied with the Director's acceptance letter), enter the government as eligible for payment for the applicable entitlement period provided all other applicable requirements (such as reporting) have been met.

3. Process those recipient governments for payment pursuant to TM 75-3 which are authorized payment as a result of an adjustment work sheet initiated by Manager, Compliance.

Chief Counsel

1. On request of the Compliance Manager assist in the preparation of the special assurance letters.

2. Review and comment on each proposed acceptance or rejection of special assurances when made to the Director by the Compliance Manager as outlined above.

3. Review all reply letters to recipient governments which accept or reject a special assurance.

4. Represent the Director at all hearings which are instituted as a result of the rejection of a special assurance.

GRAHAM W. WATT,
Director, Office of Revenue Sharing.

September 23, 1975.

Subject: Post Violation Letter Procedures.

This Technical Memorandum sets forth the procedures to be followed after the period of time provided in the violation determination letter has expired.

I. Compliance Manager

Within 15 working days from the end of the period of time given the affected recipient government in the violation determination letter, the Compliance Manager shall take one of the actions set forth in paragraphs 1 or 2.

1. Provide the Director with a recommendation for further action on the case along with one of the following letters to the recipient government's chief executive officer—

(a) A letter advising the jurisdiction that it is not in non-compliance, or;

(b) A letter advising the jurisdiction that its proposed action plan is acceptable and that its non-compliance will be considered to be resolved subject to completion of specified actions by specified dates, or;

(c) A letter advising the jurisdiction that a specified number of days extension are granted in order to accomplish specific remaining steps which will resolve the jurisdiction's non-compliance.

2. Provide the Director with a recommendation that the case be referred to (1) the Justice Department for appropriate civil action or (2) the Chief Counsel for administrative hearing.

The Compliance Manager shall provide copies of all recommendations and appropriate letters to the Chief Counsel.

II. Chief Counsel

1. The Chief Counsel shall provide the Director with recommendations concerning any action proposed by the Compliance Manager pursuant to paragraphs 1 or 2 above.

2. With respect to any case that is forwarded by the Director to the Chief Counsel for administrative hearings, the Chief Counsel shall prepare an administrative hearing complaint for the signature of the Director within 10 working days of the referral.

3. The conduct of an administrative hearing instituted by the Director shall be governed by the requirements and time periods set forth in Subpart F of the regulations.

JOHN K. PARKER,
Acting Director,
Office of Revenue Sharing.

ALL DISCRIMINATION

Age	Pre-15 day (1)	15 day out (2)	Analysis (3)	Ready for review (4)	Review scheduled (5)	Review completed (6)	Noncompli- ance latter (7)	Plan for resolution (8)	Resolved	Total
Fiscal year 1976:										
Less than 1 month:										
1 to 2 months:	2									2
Fiscal year 1975:										
2 to 3 months:	5		6							11
3 to 4 months:	6		5							11
4 to 5 months:	4	2	3						1	10
5 to 6 months:	6	1	9							16
6 to 7 months:		2	3	1		1	1			8
7 to 8 months:	4	2	2			1				10
8 to 11 months:	1	2	7			2	3			15
11 to 14 months:	3	1	3		1	1t	1	1	3	24
Fiscal year 1974:										
14 to 20 months:	6	2	2		1	7	3	1	17	39
20 to 26 months:			1			1	3	1	15	21
Fiscal year 1973: Over 26									9	10
Total	37	13	41	1	2	23	11	3	45	177

Note: The above table reflects ADP data on compliance cases as of Sept. 12, 1975. The differences between this data and the Aug. 31, 1975 master list summary are because of the inclusion of 57 Davis-Bacon cases as part of the Civil Rights Branch case listing. That

adjustment changes the civil rights total for active cases from 191 to 134. Note that the table of Sept. 12 includes only 45 of the 49 currently resolved civil rights cases.

CIVIL RIGHTS ASPECTS OF GENERAL REVENUE SHARING

THURSDAY, OCTOBER 9, 1975

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.**

The subcommittee met, pursuant to recess, at 9:30 a.m. in room 2237, Rayburn House Office Building, Hon. Don Edwards [chairman of the subcommittee] presiding.

Present: Representatives Edwards, Drinan, Badillo, Butler, and Kindness.

Also present: Janet M. McNair, assistant counsel, and Kenneth N. Klee, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

We resume at this time our inquiry regarding civil rights enforcement under the program of general revenue sharing. On yesterday we received testimony from the Department of the Treasury concerning its civil rights enforcement program. We also heard from other witnesses who outlined numerous deficiencies in that program.

This morning we will open our hearings by welcoming the Honorable Arthur S. Flemming, Chairman of the United States Commission on Civil Rights.

In February of 1975 the Commission released a report on the revenue-sharing program which raised numerous criticisms regarding the manner in which the Office of Revenue Sharing is fulfilling its civil rights responsibilities. We welcome Dr. Flemming today to present us with the findings and recommendations made in that report.

Thank you for accepting our invitation, Dr. Flemming. You may proceed with your testimony.

TESTIMONY OF HON. ARTHUR S. FLEMMING, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY JOHN BUGGS, STAFF DIRECTOR, AND JAMES LYONS, CONGRESSIONAL LIAISON

Mr. FLEMMING. Mr. Chairman, members of the subcommittee, I am Arthur S. Flemming, Chairman of the U.S. Commission on Civil Rights. With me this morning are John A. Buggs, Staff Director of the Commission, and Jim Lyons, of our Congressional Liaison Unit.

On behalf of the Commission, I would like to thank you for this opportunity to discuss the civil rights implications of the general revenue-sharing program.

The Commission has long been concerned with the civil rights implications of the general revenue-sharing program. In a June 1971 statement the Commission indicated that revenue sharing presents both

potential benefits and potential risks to the Federal Government's obligation to discharge its constitutional mandate to insure that racial or ethnic discrimination not occur in the expenditure or enjoyment of Federal funds, and the Government's obligation to carry forward a broad national policy for securing economic and social justice for all Americans without regard to race, color, national origin, religion, or sex.

Following enactment of the State and Local Fiscal Assistance Act of 1972, the Commission has attempted to monitor and evaluate its civil rights impact. In addition to numerous studies pertaining to the general social and economic conditions of minorities and women, the Commission this year published two reports which exclusively focus on revenue sharing: An evaluation of the civil rights enforcement effort of the Office of Revenue Sharing (ORS) entitled "To Provide Fiscal Assistance," Volume IV: The Federal Civil Rights Enforcement Effort—1974, and another study entitled "Making Civil Rights Sense Out of Revenue Sharing Dollars."

Moreover, the Commission has analyzed and commented upon the Department of Treasury's proposals to modify the regulations concerning nondiscrimination in revenue-sharing programs and also the Office of Management and Budget's draft bill to extend the State and Local Fiscal Assistance Act.

At this time I would like to submit for the record these Commission reports and documents since they provide the basis for much of my testimony today.

[The documents referred to follow:]

REVENUE SHARING PROGRAM—MINIMUM CIVIL RIGHTS REQUIREMENTS

INTRODUCTION

The adoption of a general revenue sharing program may well affect the manner in which the Federal Government carries out a number of its functions. It is imperative, however, that the program not interfere with the ability of the Government adequately to fulfill two major and closely related responsibilities. The first is the responsibility to enforce the mandate of the Constitution that racial or ethnic discrimination not occur in the expenditure and the enjoyment of Federal funds. The second is the responsibility to carry forward the broad national policy of securing economic and social justice for all minorities, and for the disadvantaged generally.

Revenue sharing presents both potential benefits and potential risks to the Federal Government's obligation to discharge these responsibilities. This memorandum presents an outline of *minimal* mechanisms necessary to assure that Constitutional requirements and broad national policy objectives are effectively implemented in any general revenue sharing program.

1. APPLICATION OF A CIVIL RIGHTS REMEDY TO THE REVENUE SHARING PROGRAM

Title VI of the Civil Rights Act of 1964 provides that no person is to be subjected to discrimination under any program or activity receiving Federal financial assistance. Inasmuch as general revenue sharing is one form of Federal financial assistance, the nondiscrimination requirement of Title VI applies to any program or activity assisted by general revenue sharing funds.¹

¹ S. 680 ("General Revenue Sharing Act of 1971") (Senator Baker) provides that no person shall be subject to discrimination on the ground of race, color, or national origin in any activity assisted by general revenue sharing funds. It provides sanctions for non-compliance, including referral by the Secretary of the Treasury to the Attorney General with recommendation for commencement of a civil action, and the sanctions—including fund cut-off—provided for in Title VI of the Civil Rights Act of 1964.

S. 241 ("State and Local Government Modernization Act of 1971") (Senator Humphrey) and S. 1770 ("Intergovernmental Revenue Act of 1971") (Senator Muskie) contain similar provisions; the latter bill would also empower any person adversely affected by discrimination in violation of this provision to bring a civil action to obtain relief against such discrimination.

One of the principal sanctions available to enforce Title VI consists of administrative proceedings leading to a cut-off of Federal funds. One key question is: What programs or activities under a general revenue sharing program would be subject to the nondiscrimination requirement and, therefore, also subject to the sanction of fund cut-off?

If the Federal Government is to have an effective and practical mechanism to combat discrimination in State and local activities funded under the Federal revenue sharing program, it is necessary that earmarking of the funds be made mandatory so that the sanction of fund termination can attach solely to those programs or activities for which revenue sharing funds are designated.²

Commingling of revenue sharing funds with the general funds of a State would make impossible a "tracing" of Federal funds to specific programs or activities. If, therefore, the nondiscrimination requirement were to apply to any program or activity financed by the commingled funds—as it must if the requirement is not to be rendered a nullity—then it would have to apply to all funds expended by the State. While application of the Federal nondiscrimination requirement to all State and local programs or activities would have the beneficial effect of providing substantial Federal leverage toward eliminating discrimination on the part of these governmental bodies, the sanction of cutting off all revenue sharing funds from a State in the case of discrimination in a single program or activity probably would be too drastic for practical use.

2. OTHER FEDERAL REMEDIES FOR NONCOMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

Revenue sharing represents an important new form of Federal assistance to State and local governments. It has far-reaching ramifications. Thus, it is of extreme importance that the nondiscrimination provision be one which has the maximum capability of producing compliance. Yet, experience with Title VI enforcement has demonstrated that the fund termination sanction has often proven to be too inflexible to be effective. When this factor is added to the previously mentioned problems involved in applying the fund cut-off mechanism to revenue sharing grants, it becomes clear that it is necessary to establish a comprehensive and flexible range of remedies, to be used on a selective basis.

a. *Litigation by the Attorney General*

We believe that as in the case of Title VI, litigation by the Attorney General is a useful supplement to the sanction of fund cut-off. As the Commission pointed out in its October 1970 report, "The Federal Civil Rights Enforcement Effort":

Recipients would know that not only would Federal funds be cut off for noncompliance but litigation could be brought to bring about compliance. Thus, defiance of nondiscrimination requirements, even at the cost of losing Federal funds, would be an act of futility. (at 726)

As the Commission also pointed out, however, it is undesirable to rely on litigation as a substitute for, rather than a support to, fund termination procedures.³

b. *Cease and desist order authority*

Another useful enforcement mechanism would be that of empowering the Secretary of the Treasury to issue judicially enforceable orders directing a State or local government to cease and desist from specific discriminatory practices. Provision should be made for the judicial imposition of sanctions for noncompliance with the cease and desist order, including civil and criminal penalties. Cease and desist order authority would have the benefit of offering an effective and speedy remedy short of the drastic one of fund cut-off.

c. *Criminal penalties*

A third sanction in addition to fund cut-off would be a provision making State or local officials guilty of deliberate acts of discrimination liable to criminal penalties. Under this sanction, government officials would be on notice that acts of discrimination would result not only in action against the State but also against those individual officials who are responsible.

² While not reflected in the language of S. 680, the White House has indicated that it favors a requirement that all general revenue sharing funds be earmarked by the States to specific uses.

³ As noted above, S. 680, S. 241, and S. 1770, all authorize the sanction of fund termination for failure to comply with nondiscrimination requirements.

d. Private civil suit

Private individuals subjected to discrimination should be empowered to initiate litigation in Federal District Court for appropriate relief,⁴ including recovery of treble damages, for intentional noncompliance with Federal nondiscrimination requirements. To effectuate this remedy, which would arise after administrative remedies had been exhausted, Title VI administrative procedures should be improved so as to yield a reasoned determination on the issue of alleged discrimination within a brief period (no more than 60 days). In this way, the judicial remedy could be pursued with a minimum of confusion and delay.

3. STRENGTHENING THE ENTIRE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT

In "The Federal Civil Rights Enforcement Effort" report, the Commission examined the civil rights enforcement activities of some 40 Federal departments and agencies in a wide range of subject areas, such as employment, housing, the operation of federally assisted programs, and regulated industries. In virtually all cases, the Commission found the level of civil rights enforcement seriously deficient and made a number of recommendations, including recommendations for centralized direction and coordination of civil rights enforcement in the newly formed Council on Domestic Affairs and Office of Management and Budget.

In May 1971 the Commission, in a report, "The Federal Civil Rights Enforcement Effort—Seven Months Later" concluded that the Federal response to its earlier report had been, with a few exceptions, one of tentative first steps toward stringent civil rights enforcement combined with promises to do better in the future. It found that major inadequacies in the Federal effort remained and that even the implementation of rather basic proposals for improving agency performance has been characterized by inordinate delays.

If the Commission's recommendations were implemented and Federal programs were in fact operated on a nondiscriminatory basis then the present patterns of racial and ethnic exclusion and the inequitable distribution of Federal benefits would be dramatically reduced. The enforcement of present laws, executive orders and administrative policies would bring about a basic change in practices related to race in communities throughout the Nation. They would, in fact, drastically alter the way the "system" operates, assuring greater racial justice in the communities into which revenue sharing funds would flow.

Vigorous enforcement of nondiscrimination requirements concerning revenue sharing, alone, will not be sufficient. There is large-scale disenchantment, particularly among minority group members, concerning the will and capacity of government to serve their needs and a loss of faith that the "system" can work for them. We can move them toward a renewal of that faith if the full range of protections contained in existing civil rights laws are fully enforced and the rights of minority citizens are guaranteed in fact as well as in legal theory. Therefore, we continue to believe the recommendations contained in the Commission's report should be implemented as soon as possible.

4. ASSURING EQUAL EMPLOYMENT OPPORTUNITY BY STATE AND LOCAL GOVERNMENTS

a. Amending title VII to cover State and local government employment

The Commission previously has urged amendment of Title VII of the Civil Rights Act of 1964 to remove the exemption accorded State and local government employment. In its report, "For All the People . . . By All the People," the Commission examined equal opportunity in public employment throughout the country—north as well as south—and reported widespread discrimination against minority group members in State, city, and suburban government employment.

The report pointed out that State and local government employees make many policy and administrative decisions which have a significant effect on the lives of the citizens within the jurisdiction. The report (at page 131) observed:

If these decisions are to be responsive to the needs and desires of the people, then it is essential that those making them be truly representative of all segments of the population.

⁴ As noted above, S. 1770 empowers any person adversely affected by discrimination in violation of this provision to bring a civil action to obtain relief against such discrimination.

Since revenue sharing would serve to increase the responsibility of such government, prior enactment of effective equal employment opportunity controls is imperative.

For the same reason, revenue sharing should not occur until effective Title VII enforcement machinery has been provided, by giving to the Equal Employment Opportunity Commission the authority, in case of violation, to issue judicially enforceable cease and desist orders.

b. Affirmative action by State and local governments

In its study of public employment, the Commission found that the patterns of discriminatory job distribution often resulted from past practices of discrimination in hiring and job assignment. For these patterns to be eliminated will require more than adoption of a neutral policy of nondiscrimination. State and local governments also must undertake affirmative programs of recruitment, training, and promotion of minority employees. Such affirmative action is no less vital to securing equal employment in State and local government than it is in the case of Federal agencies and Federal contractors—where affirmative action already is required by law. Given the lessening of other kinds of Federal controls in connection with revenue sharing funds, it is imperative that State and local governments, under review by an appropriate agency such as the Equal Employment Opportunity Commission or the Office of Federal Contract Compliance, be required to undertake plans of equal employment opportunity affirmative action. Such affirmative action plans should include goals and timetables for their implementation.⁵

5. THE CIVIL RIGHTS RESPONSIBILITY OF STATES AND LOCALITIES

Federal civil rights requirements, no matter how comprehensive, are unlikely to prove sufficient to provide the level of protection that is necessary to ensure that the revenue sharing funds are expended in a nondiscriminatory manner. Furthermore, States and localities must be required to demonstrate that they, as recipients of large unrestricted amounts of Federal money, can provide the type of protection which will ensure the basic civil rights of all their citizens.

Currently, few States can sustain this burden. The majority of localities and more than a dozen States have no laws comparable to the Federal civil rights acts and, in fact, the civil rights laws of those States and localities that have enacted them are severely wanting in terms of coverage, available sanctions, and level of enforcement activity. In many cases, moreover, States and localities not only have failed to provide adequate civil rights protection, but have been responsible for much of the racial discrimination that has occurred. This Commission and other Federal agencies, such as the Departments of Justice, HEW, Labor, and Agriculture, have documented gross abuses of the rights of minority group citizens by State and local governmental agencies.

Thus, a mere assurance from a governor, mayor, or county official that the rights of minorities will be protected will not suffice. States and their subdivisions must, at a minimum, enact laws and ordinances which provide for their citizens the same level of protection offered by Federal statutes, executive orders, court decisions, and executive policy pronouncements. The laws must cover such areas as:

Housing. The law must require that all housing be offered on a non-discriminatory basis to citizens of all races and ethnic backgrounds and that the policies of the jurisdiction be geared so as not to prevent minority group citizens from living within the jurisdiction or within any part of the jurisdiction.

The administration of State and local programs. The State or locality must assure that all funds which it disperses are used free from discrimination and are in fact distributed on a racially and ethnically equitable basis. This last requirement, which is essentially the same as that provided in Title VI of the Civil Rights Act of 1964, would apply to such State and local programs as education, welfare, health care, employment services, highway and recreation facility construction, and economic development loans and grants.

Laws also are necessary in the areas of public accommodations, public facilities and voting rights. These laws must not only be broad in coverage but also

⁵ With respect to sanctions for noncompliance with affirmative action requirements, see section 2 above.

must provide for effective enforcement. It is absolutely necessary that an enforcement agency be established having the power not only to investigate complaints and issue opinions, but also to conduct investigations on its own initiatives, hold hearings, issue subpoenas and cease and desist orders, seek court enforcement of its orders, initiate and intervene in litigation, levy civil penalties, and order the withholding, where necessary, of State and municipal funds from programs where discrimination is found.

These agencies must be fully staffed with trained, competent personnel. They must not be susceptible to domination by local political factions, but rather, should be permanent, independent agencies whose members are appointed for staggered terms of office. These agencies could be in part funded by the Federal Government, and perhaps given a quasi-Federal status, such as that of the State employment services. Furthermore, officials in all State and local agencies should be made to understand that it is their responsibility, subject to removal from office by agency directors, to ensure that their programs are not discriminatory in operation or effect.

This expanded, and in many cases new, effort by States and localities is not intended to supplant Federal civil rights activities, but rather to supplement them. Once the States and their municipalities prove their effectiveness in this area, the Federal agencies will be able to limit their efforts to a monitoring and spot-checking function. Until that time, however, the staffs of the two enforcement systems should work together so as to prevent duplication of effort and to ensure maximum utilization of information.*

6. THE "STATE PLAN" REQUIREMENT

As another condition of eligibility for participation in revenue sharing, the State and its political subdivisions should be required to submit a "State Plan," the purpose of which would be to assure that the State is realistically facing up to the problems it has and that revenue sharing funds will be used in ways that will better enable the State to meet and overcome these problems.

The "State Plan" should, at a minimum, contain the following elements:

a. A rank order of problems facing the State and its political subdivisions. This analysis would be supported by data and reports prepared by the relevant local agencies. Problems would include those in the areas of human resources, natural resources, economic development, and other general governmental concerns, but would be broken down into specifics. Thus, in the area of health care, the plan would relate to specific problems in the State and its various jurisdictions, such as prenatal care, care for the aged, hospital services, insufficient medical personnel, or insufficient funds to provide for the nutritional needs of its citizens.

b. In a similarly detailed fashion, the State and its jurisdictions would be required to set forth what actions they have taken in the past to cope with each of the problems they identify. This analysis would be both in terms of financial and manpower resources allocated.

c. A statement of how State and local revenue is being apportioned in the coming fiscal year and how this apportionment of funds is calculated to overcome the problems would be given. In addition, States and localities would detail how they anticipated using the Federal revenue sharing funds which they are to receive.

d. A long-range analysis of the matters set forth in points a, b, and c would be detailed. This section will require officials drafting the plan to spell out the broadest aspects of the problems. This requirement reflects the fact that effective action toward social change requires long term planning.

The State Plan would be submitted for review and approval to the Office of Management and Budget, which would exercise its reviewing function in conjunction with Federal departments having major program responsibilities re-

* The civil rights enforcement capabilities of a State or local government do not exist in a vacuum; they are closely tied to the overall level of proficiency of the government. S. 241 contains a requirement that, in order to qualify during the second and subsequent years of general revenue sharing, States must prepare a master plan and timetable for modernizing and revitalizing State and local governments. This could be an important contribution to strengthening the civil rights capabilities of State and local governments. It also is an important element in improving the capacity of State and local government effectively to carry out the planning functions discussed in the following section.

lating to the plans. National policy criteria for such reviews should be established by the Council of Domestic Affairs.

One of the major concerns in the review process should be whether a plan takes into account the special needs of minority group members and the economically disadvantaged. Thus, it would be unacceptable if a State or political subdivision overlooked the health needs of its poor citizens while devoting considerable resources to developing a highway system which, by its nature and location, services only the more affluent sections of the population. In the past, some States and localities have participated in Federal programs on a selective basis, often refusing to participate in social welfare programs such as public housing or food assistance while accepting Federal money for suburban water and sewage facilities or recreational facilities that serve only the affluent. Revenue sharing should not be allowed to support these insensitive policies.

Furthermore, the State Plan should be responsive to important Federal policies, such as the racial and ethnic desegregation of schools and the elimination of racial and economic polarization in metropolitan areas. The programming of States and localities should be required to reflect these Federal priorities. It must be made clear that Federal funds, whether from revenue sharing or categorical grants, cannot be used to aid in schemes which tend to discriminate against, isolate, impoverish, or perpetuate second class citizenship for any racial or ethnic group.

7. DISTRIBUTION OF FUNDS ACCORDING TO NEED

a. Distribution among the States

Distribution of general revenue sharing funds should be determined on the basis of indicators of need, such as the relative wealth of the State, measured by average personal income, and the number of the State's population who are "disadvantaged individuals" as defined in the U.S. Department of Labor Manpower Program.⁷

The present Federal system of categorical grants is, in its every structure, responsive to such demonstrated domestic needs as these. Given the shortage of Federal, State, and local government funds in relation to the demands made upon them, if we are adequately to serve the needs of our many citizens who are trapped in poverty, we cannot afford to distribute any large amount of Federal revenue without reference to such fundamental determinants of need.

In its ongoing study of racial and economic polarization in metropolitan areas, the Commission has seen how lack of adequate fiscal resources has contributed to an accelerating economic and racial separation in these areas. The lack of funds to finance adequate public services causes those who can, to flee the inner cities, and at the same time causes many suburban jurisdictions to use zoning and other devices to exclude the poor, who are most in need of public services. It also is such factors as these that make the State Plan, described in Section 6, a necessary "civil rights" protection.

For these reasons, the distribution of the general purpose revenue sharing funds should reflect a national commitment to the special problems of the poor and of our urban areas, where the poor and the disadvantaged are heavily concentrated.⁸

b. Distribution within States

A requirement that States "pass through" a proportion of general revenue sharing funds to local jurisdictions is an important safeguard in assuring that the cities receive their fair share of revenue sharing funds. For the reasons stated in our discussion of "Distribution Among the States" we believe that

⁷ The term is defined to include: Any poor person who does not have suitable employment and who is either (1) a school dropout; (2) a member of a minority; (3) under 22 years of age; (4) over 45 years of age; (5) handicapped. U.S. Department of Labor, "Cooperative Area Manpower Planning System," Supplement No. 1, Dec. 14, 1970, at 10, n. 2.

⁸ S. 680, S. 241, and S. 1770 all provide that each State's share in general revenue sharing funds is a function of (a) total population of the State and (b) the State's "tax effort"—the amount of revenue it raises in relation to the total personal income earned by residents of the State.

such a requirement should reflect the same criteria of need as recommended in that Section of this memorandum.⁹

MARCH 17, 1975.

Mr. GRAHAM W. WATT,
Director, Office of Revenue Sharing, Department of the Treasury,
Washington, D.C.

DEAR MR. WATT: The following comments pertain to the Department of the Treasury's proposed amendments to section 51.32 (f) of the regulations contained in Part 51 of Subtitle B of Title 31, Code of Federal Regulations, which became effective April 5, 1973. The proposed amendments concern the Department's enforcement of the non-discrimination provision contained in Section 122 (a) of the State and Local Fiscal Assistance Act of 1972.

As you know, the Commission recently released Volume IV of the Federal Civil Rights Enforcement Effort—1974, "To provide Fiscal Assistance." This report and *Making Civil Rights Sense Out of Revenue Sharing Dollars* form the basis for our comments here.

We have concluded in "To Provide Fiscal Assistance" that ORS' civil rights compliance program has been fundamentally inadequate. Abundant evidence indicates that discrimination in the employment practices and in the delivery of benefits of State and local government programs is far-reaching, often extending to activities funded by general revenue sharing. Nonetheless, ORS has one of the most poorly staffed and funded civil rights compliance programs in the Federal Government. Moreover, ORS has not taken the few actions possible within the constraints of its resources which would have made its civil rights compliance effort maximally effective.

As the following specific comments make clear, the Commission does not believe that the proposed amendments to section 51.32 (f) are adequate to insure effective enforcement of the prohibition against discrimination in programs partially or completely funded by revenue sharing money. The Commission, therefore, urges that the proposed amendments not be adopted but rather be revised further in accordance with our comments and criticisms.

A copy of both reports are enclosed along with our comments. If you wish to clarify any matter in our comments or the reports, please call Bud Blakey (254-6626).

Sincerely,

JOHN A. BUGGS,
Staff Director.

OBJECTION TO PROPOSED REGULATION SECTION 51.32 (F) (1)

Section 122(b) of the State and Local Fiscal Assistance Act provides the Secretary of the Treasury with the legal authority necessary to effectuate compliance with the non-discrimination provision contained in Section 122(a) of the Act. Section 122 (b) reads in part:

the Secretary is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law.

Section 51.32(f) (1) of the current regulation mirrors the act and provides in pertinent part that

the Secretary is authorized: (i) To refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; (ii) to exercise the powers and functions and the administrative remedies provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (iii) to take such other action as may be authorized by law.

⁹ S. 680, S. 241, and S. 1770 all require the States to "pass through" a certain proportion of funds to local governments. They all permit each State, acting in conjunction with its local governments, to determine the basis for allocation among the local governments— which basis could reflect the relative need of the respective local governments.

Absent such special agreement, S. 680 and S. 241 provide that the share of each local government is to be the same as its relative contribution to overall State revenues. S. 1770 uses a more complex distribution formula, which makes the share a function of each government's contribution to State revenues, its population size, and its share of poor persons (those with incomes of less than \$3,000) and of persons regularly receiving public assistance.

The Commission objects to the proposed regulation 51.32(f)(1) because it eliminates reference to the Secretary's authority to "take such other action as may be provided by law" to secure compliance with Section 122 (a) of the act. This omission is inexcusable. The proposed regulations like the current regulations must reflect the full range of authority provided to the Secretary by the Act. Just as an executive officer cannot appropriate powers that were not delegated to him or her by Congress, neither can an executive officer abandon those powers which Congress has seen fit to delegate.

OBJECTION TO PROPOSED REGULATIONS SECTION 51.32 (F) (1) (II)

(ii) To initiate an administrative hearing pursuant to the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). An order of an administrative law judge to withhold temporarily, to repay, or to forfeit entitlement funds, will not become effective until:

(A) There has been an express finding on the record, after notice and opportunity for hearing of a failure by the recipient government to comply with a requirement of this section.

(B) At least 10 days have elapsed from the date of the order of the administrative law judge. During this period, additional efforts will be made to assist the recipient government in complying with the regulation and in taking appropriate corrective action.

(C) Thirty days have elapsed after the Secretary has filed with the Committee on Government Operations of the House of Representatives and the Committee on Finance of the Senate a full written report of the circumstances and the grounds for such action. The time limitations of subparagraphs (B) and (C) can run concurrently.

(D) The Secretary has notified the recipient government that, in addition to whatever sanctions have been imposed by the administrative law judge, the Office of Revenue Sharing will withhold payment of all entitlement funds until such time as the recipient government complies with the order of the administrative law judge.

Further, the amount of the forfeiture or repayment of entitlement funds, if any, will be limited to the program or activity in which the noncompliance has been found. Such funds shall be collected by a downward adjustment to future entitlement payments and will be deposited in the general fund of the Treasury. If the Secretary determines that adjustment to future entitlement payments is impracticable, he may refer the matter to the Attorney General for appropriate civil action to require repayment of such amount to the United States.

The Commission objects to the proposed regulation section 51.32(f)(1)(ii) because it contains no provision for the Secretary to exercise his Title VI authority to temporarily withhold or defer revenue sharing payments pending completion of the administrative hearing procedures specified under Title VI.

The Commission views the absence of provisions for fund deferral in this section of the proposed regulation as especially grievous given the fact that a Federal court has already repudiated the position taken by ORS officials that they lack the statutory authority to defer funds prior to completing the administrative procedures specified in Title VI.

One of the central issues in the case of *Robinson v. Schultz* concerned the authority of the Secretary to defer revenue sharing payments. Plaintiffs in the case sought to have ORS defer further revenue sharing payments to the City of Chicago after the ORS, through its own investigation, found evidence of discrimination within the Chicago Police Department, the principal recipient agency of the city's revenue sharing allocation. In support of their position, plaintiffs cited legal precedent for the deferral of Federal assistance prior to completion of Title VI administrative proceedings. The Director of the ORS responded that he was not authorized by law to defer funds and that revenue sharing differed from other programs of financial assistance where deferral by Federal agencies had been approved by the courts.

On April 4, 1974, the court ruled in favor of the plaintiff's claim and declared that "Section 122(b)(2) of the State and Local Fiscal Assistance Act, 31 U.S.C. § 1242(b)(2), confers upon the Secretary of the Treasury the power to defer payment of federal revenue sharing funds pursuant to a formal administra-

tive hearing as provided by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1."¹

The fact that the proposed regulations ignore the authority of the Secretary to defer funds is made all-the-more inexplicable by the fact that the Director of ORS in the *Robinson* proceeding cited the existing regulations as proscribing deferral. Now that the statutory authority of the Secretary to defer funds has been affirmed through federal adjudication, the Office of Revenue Sharing bears a responsibility to enact regulations which provide for the exercise of that power.

The importance of the power to defer revenue sharing funds prior to completion of the Title VI administrative procedures cannot be overemphasized. The deferral power has been used by other Federal agencies to effectuate timely compliance with nondiscrimination statutes and to prevent the further expenditure of federal monies in violation of those statutes. In this regard, it is especially noteworthy that the Assistant Attorney General of the United States for Civil Rights suggested that the ORS modify its regulations to provide for the exercise of the deferral power. On March 30, 1973, Mr. Pottinger wrote to ORS:

A provision in Section 51.32(f) (1) allowing the Secretary to initiate enforcement proceedings in case of threatened noncompliance, as well as past or present noncompliance, may be helpful. Such a provision is standard in Title VI regulations. A provision permitting deferral of payments pending a hearing such as that exercised by agencies under Title VI, may be appropriate. Such a deferral need not constitute a forfeiture, and may be made subject to the type of limitations imposed on the Commissioner of Education under Title VI 42 U.S.C. 2000d-5.²

We concur with the Assistant Attorney General's suggestion that the regulations should provide for the initiation of enforcement proceedings "in case of threatened noncompliance, as well as past or present noncompliance."

Finally, the Commission believes that Section 51.32(f) (1) (II) should specify the kinds of evidence of noncompliance (in addition to the evidence provided for by the unduly restrictive set of circumstances outlined in the proposed Section 51.32(f) (2)) which warrant the Secretary's use of Title VI enforcement powers. Evidence of discrimination in a program partially or completely funded by revenue sharing money as demonstrated by any of the following should trigger immediate deferral and initiation of administrative proceedings by the Secretary.

A finding of noncompliance based upon an investigation by the Department of the Treasury.

A finding of discrimination based upon an investigation or administrative hearing by any other Federal agency.

A lawsuit filed by the Department of Justice alleging discrimination.

A finding by state court or human rights commission of discrimination.

A lawsuit filed by a private party which sets forth a *prima facie* case of discrimination.

OBJECTION TO PROPOSED REGULATION SECTION 51.32(F) (2)

(2) The Secretary *may* immediately defer the payment of entitlement funds to a recipient government pending the entry of an affirmative action order by a Federal court.

The Commission urges ORS to revise the language of this proposed rule so that it reads: "The Secretary shall (rather than "may") immediately defer the payment of entitlement funds . . ." As we have argued elsewhere, the Fifth Amendment of the Constitution clearly proscribes Federal support of discrimination. Therefore, Federal officials must, where reasonable persons would agree that non-discrimination provisions would most likely be violated if the funds were provided, decline to allocate such funds until the matter of noncompliance is resolved. (See *The Federal Civil Rights Enforcement Effort—1974*, Vol. IV. *To Provide Fiscal Assistance* 88 (February 1975)).

¹ *Robinson v. Shultz*, Order of Apr. 4, 1974, C.A. No. 74-248 (D.D.C.).

² Letter from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division to Mr. Graham W. Watt, Director, Office of Revenue Sharing, Mar. 30, 1973.

OBJECTION TO PROPOSED REGULATION SECTION 5132(F) (2) (I) AND (II)

(i) A violation of the nondiscrimination provision of this Section of the Act (Section 122) was alleged in the complaint before the court;

(ii) The court finds that the recipient government has violated the non-discrimination provision of this Section of the Act;

There is little persuasive reason to require that a violation of Section 122 of the State and Local Fiscal Assistance Act of 1972 (hereafter Revenue Sharing Act) be alleged in a complaint before the court. If a violation of some other civil rights law is alleged which, if true, would also constitute a violation of the Revenue Sharing Act, then deferral would be appropriate when the Secretary determines that general revenue sharing (GRS) funds were used in the program or activity under question. An audit would readily reveal whether GRS funds are involved. The conduct of an audit need not await the final outcome of court proceedings. Further, if an audit shows that GRS funds have been or are being spent in the subject program or activity, deferral action need not be postponed until express findings of a Federal court are issued.

OBJECTION TO PROPOSED REGULATION SECTION 51.32(F) (2) (III)

(iii) The question of deferral has not been considered by the court.

We object to this part of the proposed rule which would circumscribe ORS's authority to defer funds when the question of deferral is raised in court, except when the court expressly orders ORS to defer funds. Many circumstances could arise in court proceedings in which ORS could point as cause, however unreasonable, for refusing to defer funds. Defendants could virtually raise the issue in order to avoid the remedy. In suits to which ORS is not a party, the court could hold that deferral is appropriate or required, but could not order ORS to defer funds. In suits to which ORS is a party, the court could consider deferral an appropriate remedy but decide to leave action to ORS's discretion. In these and other instances, ORS could refuse to defer funds solely on the grounds that the question was considered by the court, despite preferences expressed by the court.

OBJECTION TO PROPOSED REGULATION SECTION 51.32(F) (3)

The Commission objects to proposed regulation Section 51.32(f) (3). The Section is as follows:

(3) Nothing in these regulations is intended to preclude the United States, in a civil action initiated by the Attorney General of the United States pursuant to Section 122(c) of the Act, from seeking or a court from granting an order to require the repayment of funds previously paid under this Act, or ordering that the payment of funds under this Act be terminated or deferred. In addition, the Secretary may initiate the procedure provided for in paragraph (f) (1) (ii) of this Section against a recipient government which has been made as a defendant in such a civil action if it is the Secretary's judgment, after consultation with the Attorney General, that an administrative withholding of entitlement funds is an appropriate measure to ensure compliance with this Section.

In its notice of proposed rules, ORS states that the purpose of this subparagraph is to:

* * * make clear that if the Attorney General has initiated a civil action against a recipient government under Section 122(c) of the Revenue Sharing Act, it is not required that the Secretary (of the Treasury) also initiate an administrative enforcement action.

The Commission objects to the proposed regulation Section because it makes the immediate deferral of funds a discretionary matter when the recipient government has been named as a defendant in a civil action filed by the Attorney General pursuant to Section 122(c) of the Act. The Commission believes that immediate deferral should be imposed when there is legal evidence of noncompliance. Rather than providing a justification for continuing revenue sharing payments, the fact that the Attorney General has filed suit under the Act only underscores the need for immediate deferral.

**U.S. COMMISSION ON CIVIL RIGHTS COMMENTS ON OMB DRAFT BILL EXTENDING
THE STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972**

The U.S. Commission on Civil Rights provides these comments to the Office of Management and Budget in response to its request of March 3, 1975. The Commission has long been concerned with the civil rights implications of the general revenue sharing program because of its impact on minority group persons. In a June 1971 statement the Commission indicated that revenue sharing presents both potential benefits and potential risks to the Federal government's obligation to discharge its constitutional mandate to ensure that racial or ethnic discrimination not occur in the expenditure or enjoyment of Federal funds, and that the government carry forward a broad national policy for securing economic and social justice for all Americans without regard to race, color, national origin, religion or sex.

Since that time the Commission has engaged in several important studies with respect to the general social and economic conditions of minorities and women, specifically Black Americans, Mexican Americans, Puerto Ricans, Asian Americans and Native Americans. We have also recently concluded an evaluation of the Civil Rights Enforcement Effort of the Office of Revenue Sharing (ORS)—"To Provide Fiscal Assistance" and *Making Civil Rights Sense Out Of Revenue Sharing Dollars*. The views and comments offered here are based in large measure on those two reports and our extensive background and research in this area.

We have set out, where appropriate, relevant portions of the statute or proposed statutory changes. In cases where the Commission recommends an amendment or suggests possible language, we have provided you with our rationale.

SECTION 104. RECOMMENDATION FOR AMENDMENT

The U.S. Commission on Civil Rights believes that the prohibition against use of revenue sharing funds to obtain grants under federal matching fund programs should be eliminated. The Commission understands that the administration study group established to review the State and Local Fiscal Assistance Act for the President also recommended elimination of this restriction. The Commission's position is based upon its recognition of the fact that matching funds, potentially available from general revenue sharing, may be the only source of funding available to poorer local communities. We further believe that the Section 104 restriction should be eliminated because it has been used by some officials as an excuse for refusing to fund social programs supported at least in part by Federal aid that carries a matching fund requirement. Finally, the Commission's recommendation takes into account the fact that the current prohibition against *indirect* use of revenue sharing funds to meet matching requirements is virtually enforceable.

SECTION 105. COMMENT ON PROPOSED AMENDMENT

The magnitude of the State and Local Fiscal Assistance Act—one of the largest single programs of federal domestic assistance—demands that Congress and the Executive Branch faithfully exercise their governmental oversight responsibilities. The need for a thorough review of the act which can only be accomplished through the process of legislation and appropriation is underscored by the current state of the national economy and the experimental status of the act. Therefore, provision should be made for a timely and comprehensive review of the act's implementation.

SECTION 108(b) (6) (B). COMMENTS ON PROPOSED AMENDMENTS AND ANALYSIS

Beginning with the entitlement period that begins July 1, 1976, the maximum constraint shall increase at a rate of 6 percentage points per entitlement period until it reaches 175 percent.

The Commission agrees with the proposed amendment which would raise the ceiling on revenue sharing allocations for counties and local governmental units in 6 per centum yearly increments from 145% to 175% of the per capita entitlement of all local governments in a State.

We take strong exception, however, with the statement in the analysis that increasing the entitlement ceiling from 145% to 175% will remedy the effects of "any underenumeration of the population that may have occurred in the 1970 census." Research conducted for the ORS indicates that the adverse effect of census underenumeration would be reduced but by no means entirely eliminated

by removing the 145% limitation.¹ (See the Commission's recommendation regarding the problem of census underenumeration under Section 109).

SECTION 108(b)(6)(B). RECOMMENDATION FOR AN ADDITIONAL AMENDMENT

The Commission believes that Section 108(b)(6)(B) should be amended further to eliminate the 20% floor on per capita revenue sharing payments on a phased schedule similar to that proposed in regard to the ceiling. Elimination of the minimum per capita payment provision would transfer money from a number of governmental units that perform few consequential functions to other governments that have demonstrably greater responsibilities and need.

SECTION 108(D)(1). COMMENT ON PROPOSED AMENDMENT

Units of local government.—The term "unit of local government" means . . . the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions (.) as certified to the Secretary by the Secretary of the Interior, or, in the case of State affiliated tribes, the Governor of the State in which the tribe or village is located.

The Commission recognizes the potential difficulty in making a determination of whether or not "the recognized governing body of an Indian tribe or Alaskan native village performs substantial governmental functions." Nevertheless, the Commission disagrees with the proposed amendment which would delegate responsibility for this determination to State Governors in the case of State affiliated tribes. The proposed amendment would not clarify the standard of "substantial governmental functions", but rather would only increase the likelihood of its inconsistent application.

SECTION 108(D)(1). RECOMMENDATION FOR ADDITIONAL AMENDMENTS

Amendments should be sought to clarify two other areas of ambiguity inherent in Section 108(d)(1). These amendments would provide 1) that tribal members living off their reservation but in the county areas in which their tribe is located are to be counted in determining the Indian tribe's allocation; and 2) that tribal governments located some distance from an Indian reservation are eligible recipients if they perform substantial governmental functions.

SECTION 109(A)(7)(B). RECOMMENDATION FOR AN ADDITIONAL AMENDMENT

Under the proposed extension of the act, many governments would continue to be deprived of their rightful entitlement because of the problem of census underenumeration. For this reason, we recommend the inclusion of an additional clause to this section which would require the Secretary of the Treasury to use the Census Bureau's national estimates of population undercount to correct for known deficiencies in census data.

SECTION 121(A). COMMENT ON PROPOSED AMENDMENT

Reports on Use of Funds.—Each State government and unit of local government which receives funds under subtitle A shall, after the close of each entitlement period, submit a report to the Secretary (setting forth the amounts and purposes for which funds received during such period have been spent or obligated) on the use of the funds received during such period. Such reports shall be in such form and detail and shall be submitted at such time as the Secretary may prescribe.

The Commission believes that this amendment may be ineffective. Governments need not spend the funds received under a given entitlement during the actual entitlement period. Under the proposed amendment, a government could simply report that it had not used the funds received during the entitlement period. That government would not be required to report how it used the funds in the following entitlement period since the proposed amendment only requires reporting on "the use of the funds received during *such* (the entitlement) period". Therefore, in lieu of the proposed phrase "on the use of funds received during such period," the Commission would recommend the alternative phrase "on the use of funds spent during that period."

¹ Reese C. Wilson and E. Francis Bowditch, Jr., *General Revenue Sharing Data Study*, 4 vols., prepared for the Office of Revenue Sharing (Menlo Park, Calif.: Stanford Research Institute, and Cambridge, Mass.: Technology Management, August 1974).

SECTION 121 (A) AND (B). RECOMMENDATION FOR ADDITIONAL AMENDMENTS

The Commission believes that the act should provide some guidance on the nature of information ORS obtains from revenue sharing recipients. The Commission therefore recommends that Section 121 (a) and (b) be amended to require state and local governments to report the impact of proposed and actual expenditures on various population subgroups, including minorities and women, both as employees in and beneficiaries of the funded projects.

Finally, Section 121 should be amended to require governments receiving revenue sharing funds to make available for public inspection, in addition to the other reports required by ORS, detailed employment data cross-classified by race and sex covering all positions in the governmental unit.

SECTION 122 (A). RECOMMENDATION FOR AMENDMENT

The draft bill proposes no changes in Section 122(a) of the State and Local Fiscal Assistance Act of 1972. That section states:

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under Subtitle A.²

A serious problem raised by the coverage of this prohibition against discrimination is that it may not extend to the full range of programs or activities made possible by the Act. State and local governments are granted wide discretion in how they can use general revenue sharing funds, allowing those governments to choose those programs or activities to be funded with general revenue sharing monies and those to be funded by other sources. The use of GRS funds for a particular expenditure can free State and local funds for other uses. This type of allocation enables a State or local government to use its own funds for activities which might have a discriminatory impact,³ such as housing and health care programs, and reserve GRS funds for less controversial activities or programs such as traffic safety and pollution abatement. Thus, because of this fungibility of general revenue sharing funds, State and local governments may use them in such a way as to avoid compliance with Section 122(a).

The Comptroller General has expressed a similar concern. He noted that:

... requirements of the Act applicable to direct uses of the funds apparently can be avoided either by (1) budgeting revenue sharing funds in a manner which will reduce potential compliance problems or (2) displacing funding sources. It is clear that a variety of restrictions can be imposed and enforced on the direct uses made of revenue sharing. However, unless identical requirements are imposed on all or a major part of a recipient's other revenues, the actual effectiveness of such restrictions is doubtful.⁴

This Commission believes that under the Act there is a Federal responsibility to ensure that general revenue sharing funds are not used to free funds for programs or activities which are violative of the intent of the nondiscrimination provision.⁵ It appears, however, that it is not possible for the Department of the Treasury to execute this responsibility fully as it is almost impossible to trace the impact of all GRS funds on a recipient jurisdiction. The Office of Revenue Sharing reported:

It became readily apparent . . . that it was impossible as a practical matter to trace "freed-up" funds, especially after the first year of funding.

² "Funds made available under Subtitle A" are general revenue sharing funds.

³ For example, the Act would prohibit the use of entitlements for the construction of a highway in a discriminatory fashion, e.g., a highway improperly routed through a minority community, which would cause considerable disruption and fragmentation of that community and which by considering engineering and design standards and socioeconomic factors could be demonstrated to have been routed elsewhere. Nonetheless, the planned highway system would typically involve numerous separate and distinct projects (the Federal Aid Highway Act, as amended (22 U.S.C. § 101(a)) defines a project as "an undertaking to construct a particular portion of a highway. . . .") A State might try to avoid conflict with the State and Local Fiscal Assistance Act's proscription of discrimination in the use of GRS funds by using nonrevenue sharing funds for that portion of the road routed through the minority community and revenue sharing funds for less controversial portions.

⁴ Statement of Elmer B. Staats, Comptroller General of the United States, in *Hearings on Revenue Sharing Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations*, 93d Cong. 2d sess., pt. 1, at 607 (1974).

⁵ U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974*, vol. IV, *To Provide Fiscal Assistance* 97 (February 1975).

Much of the impossibility is due to inflation and to a reduction in the funding of other Federal programs.⁶

We believe that the most appropriate solution would be for the legislation renewing the general revenue sharing program to reflect recognition of the fungibility of money by placing the entire budgets of recipient governments under the prohibition against discrimination. Therefore, we recommend the following language be substituted for the current Section 122(a) of the Act:

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part by any recipient of funds made available by Subtitle A.

SECTION 122 (B). COMMENT ON PROPOSED AMENDMENTS AND RECOMMENDED
ALTERNATIVE AMENDMENTS

Section 122(b) of the Act sets forth the responsibilities and authority of the Secretary to enforce Section 122(a). The draft bill proposes that the introduction to this Section read:

Authority of the Secretary.—Whenever the Secretary has reason to believe that a State government or unit of local government has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of the State (or in the case of a unit of local government, the Governor of the State in which such unit is located) of such noncompliance and shall request the Governor to secure compliance. If within a reasonable period of time after such request, the Secretary concludes that the Governor has failed or refuses to secure compliance, the Secretary is authorized. . . .

This introduction like the introduction to the current Section 122(b)⁷ is very weak. It does not require the Secretary of the Treasury to take action if compliance cannot be achieved, but merely authorizes the Secretary to do so. It is vague, permitting action only if compliance is not achieved "within a reasonable period of time."

Voluntary action is not sufficient. To illustrate, we note a major instance in which compliance with Section 122(a) was not achieved and the Secretary of the Treasury did not voluntarily take action against the noncomplying recipient. In this case, a Federal district court found discrimination in certain employment practices of the Chicago Police Department,⁸ which was receiving general revenue sharing funds. It seemed clear from the court's findings that general revenue funds were being spent in violation of Section 122(a), but the Department of the Treasury continued to provide funds to the City of Chicago. The Federal district court in the District of Columbia ultimately ordered the Department to defer funding.⁹ To ensure that the Department of the Treasury acts to obtain compliance with Section 122(a), Section 122(b) should be revised to require the Secretary to take action in the event of noncompliance.

Moreover, it is essential that a time limit be set for Secretarial action following a request for compliance. Without time limits there is a tendency to negotiate indefinitely, especially with recalcitrant recipients who have not stated a refusal to come into compliance, but also have not taken adequate action to correct non-compliance. Indeed, protracted negotiations for compliance are characteristic of Federal agency civil rights programs.¹⁰ The regulations implementing the State and Local Fiscal Assistance Act limit the time for securing compliance to 60 days.¹¹ It is, therefore, recommended that the phrase, "sixty days" be substituted for the phrase "reasonable period of time" in Section 122(b).

Thus, to ensure that the introduction to Section 122(b) is both mandatory and specific, it should be worded:

⁶ Attachment 1 to letter from Graham W. Watt, Director, Office of Revenue Sharing, Department of the Treasury, to John A. Buggs, Staff Director, U.S. Commission on Civil Rights, Jan. 20, 1975.

⁷ The only change proposed in the draft bill from the current introduction to Section 122(b) is that in the first sentence the proposed section uses the term "has reason to believe," while the current section uses the term "determines."

⁸ *United States v. City of Chicago*, Civ. No. 73 C 2080, 8 EPD Para. 9785 (N.D. Ill. Nov. 7, 1974) (Interim Order).

⁹ *Robinson v. Shultz*, Civ. No. 74-248, (D.D.C. Dec. 1974) (Interim Order).

¹⁰ See, for example, *The Federal Civil Rights Enforcement Effort—1974*, Vol. III, To Ensure Educational Opportunity (January 1975).

¹¹ 31 C.F.R. § 51.32(f).

Authority of the Secretary.—Whenever the Secretary has reason to believe that a State government or unit of local government has failed to comply with subsection (a) or an applicable regulation, he shall notify the Governor of the State (or in the case of a unit of local government, the Governor of the State in which such unit is located) of such noncompliance and shall request the Governor to secure compliance. If within sixty days after such request, the Secretary concludes that the Governor has failed or refuses to secure compliance, the Secretary is required. . . .

The current Section 122(b) of the Act goes on to enumerate the actions the Secretary may take if compliance is not achieved. The Secretary is authorized:

(1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law.

In the draft bill, the powers of the Secretary in the event of noncompliance have been even more closely enumerated. For the most part, this enumeration could serve a useful purpose. For example, paragraph 122(b)(2) of the draft bill which would authorize the Secretary

(2) to defer or withhold payment of entitlement funds with respect to such State government or unit of local government,

(i) upon his determination on the record, after notice and opportunity for hearing, that such State government or unit of local government has failed to comply with subsection (a) or an applicable regulation; or

(ii) upon his conclusion that a Federal court or Federal administrative tribunal has found on the record, after notice and opportunity for hearing, facts which demonstrate that a State government or unit of local government has failed to comply with subsection (a) or an applicable regulation.

The Office of Revenue Sharing has been reluctant to exercise its authority to defer funds. The proposed paragraph 122(b)(2) would make clear that such an authority exists and would be an important amendment to the State and Local Fiscal Assistance Act. We would urge, however, that deferral of funds be mandatory, whenever a Federal court or Federal administrative tribunal has made a formal finding of noncompliance.

Moreover, in describing the Secretary's power to defer funds, the draft bill does not state that deferral should take place whenever it is clear that a recipient government is in noncompliance with Section 122(a), as for example if a Department of the Treasury investigative finding has revealed noncompliance, the Department of Justice has filed a lawsuit alleging discrimination by a general revenue sharing recipient, a State court or human rights commission has made a finding of discrimination by a revenue sharing recipient, or a brief filed in a private suit sets forth a *prima facie* case of discrimination by a recipient. We believe that the Secretary currently has the obligation to defer funding in such instances. This should be made clear in the revised Act because it is likely that the failure to fully articulate this obligation in the amended Act would be interpreted as a limitation on the Secretary's powers.

In addition, we take issue with the removal of specific reference to Title VI from the authority of the Secretary of the Treasury. The administration's *Analysis*, which accompanies the draft bill, indicates that the removal of reference to Title VI would be made because "Congress did not intend general revenue sharing to be a Title VI program *per se*." The argument presented in the *Analysis* is that "Title VI deals with the payment of financial assistance by way of grant, loan, or contract other than a contract of insurance or guarantee. Revenue sharing payments are not within any of these categories."

We strongly disagree. Our view would appear to be corroborated by Federal agency Title VI regulations. These regulations, which are similar for most Federal agencies and have been approved by the President, define the term "Federal financial assistance" very broadly. For example, HEW's Title VI regulations state:

The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement,

arrangement or other contract which has as one of its purposes the provision of assistance. [Emphasis added.]¹²

It would appear that the general revenue sharing program is a Federal "arrangement . . . which has as one of its purposes the provision of assistance" and would thus be a program of Federal financial assistance within the meaning of Title VI.

ORS also argues that general revenue sharing is not a Title VI program because

States and units of local government are automatically eligible for revenue sharing funds pursuant to Section 102 of the Act. There are no applications for State or local governments to fill out to the satisfaction of the Treasury Department in order to qualify for general revenue sharing funds.

This is not strictly speaking correct. Section 123 of the Act set forth a number of prequalification requirements.¹³ Before receiving revenue sharing funds, State and local governments must establish to the satisfaction of the Secretary that they will comply with those requirements. Moreover, it is noted that there are other Federal assistance programs in which recipient eligibility is determined by law and not by Federal review of recipient applications. Federal agency Title VI regulations make clear that these programs are covered by Title VI.¹⁴

At first glance, the removal of reference to Title VI in Section 122(b) might appear to be insignificant since the enumeration of the specific powers of the Secretary in the draft bill gives the Secretary essentially the same powers as those given by the State and Local Fiscal Assistance Act.¹⁵ Indeed, the enumeration serves to clarify the Secretary's powers. Under the current Act these powers are largely given by implication only, as for example, by reference to the powers and functions of Title VI.

Nonetheless, it is our belief that the removal of reference to Title VI could be very detrimental to the enforcement of Section 122(a). We anticipate that such an omission would confirm the Office of Revenue Sharing's posture that its mandate to ensure compliance with the nondiscrimination provision does not require the same stringent enforcement as is required under Title VI. The Office of Revenue Sharing has frequently attempted to explain its failure to rigorously enforce the nondiscrimination provision by arguing that general revenue sharing is not a Title VI program. For example, as of late 1974 the Office of Revenue Sharing had not conducted any full-scale preaward and postaward civil rights compliance reviews unrelated to the receipt of complaints of discrimination and did not plan the systematic conduct of such reviews at any time in the near future. ORS apparently viewed that it would be inapplicable for these elements to be included in its program. It stated:

"Pre-award and post-award" compliance reviews are terms clearly belonging to Title VI grant agencies . . . the logic of these concepts has no application to General Revenue Sharing and is, in our judgment, a concept that attaches to the Title VI categorical grant programs.¹⁶

The Commission believes that Title VI standards are entirely applicable to the general revenue sharing program. Although the State and Local Fiscal Assistance Act transferred much of the responsibility for expending these Federal funds from the Federal Government to States and local governments, this Commission believes that there is every indication that the Federal Government intended to retain full responsibility for ensuring civil rights compliance in the expenditure of these funds. We note that President Nixon, a proponent of the current general revenue sharing program stated:

The revenue sharing proposals I send to the Congress will include the safeguards against discrimination that accompany all other Federal funds allocated to the States. Neither the President nor the Congress nor the

¹² 45 C.F.R. § 80.13(f). See also Department of Housing and Urban Development Title VI regulations, 24 C.F.R. § 1.2(e).

¹³ For example, State and local governments must establish to the satisfaction of the Secretary that they will use general revenue sharing funds within a reasonable period of time, expend revenue sharing funds in accordance with their own laws and procedures, and use fiscal and auditing procedures conforming to guidelines established by the Secretary.

¹⁴ Such programs include National Forest Revenue Sharing (see 7 C.F.R. § 15, Appendix A) and Wildlife Refuge Revenue Sharing (see 43 C.F.R. § 17, Appendix A).

¹⁵ Under both the current Act and the draft bill, the Secretary is authorized, in the event of failure to achieve compliance, to refer the matter to the Attorney General for civil action, defer the payment of entitlement funds, terminate the payments of such funds, or order their repayment.

¹⁶ Attachment 2 to 1975 Watt letter, *supra* note.

conscience of the Nation can permit money which comes from all of the people to be used in a way which discriminates against some of the people. . . . [Italics added.]¹⁷

It is imperative that the legislation renewing the general revenue sharing program make clear that in the enforcement of the nondiscrimination provision the Federal Government must at a minimum uphold the standards required by Title VI. We, therefore, recommend that any amendment of Section 122(b) of the Act continue to provide the Secretary of the Treasury with the authorization "to exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964."

SECTION 122. RECOMMENDATIONS FOR ADDITIONAL AMENDMENTS

There are several additions which we propose for the draft bill in order to strengthen civil rights enforcement under general revenue sharing. The Commission found that the compliance program of the Office of Revenue Sharing has been fundamentally inadequate.¹⁸ The Commission reported that:

Abundant evidence indicates that discrimination in the employment practices and in the delivery of benefits of State and local government programs is far-reaching, often extending to activities funded by general revenue sharing. Nonetheless, ORS has one of the most poorly staffed and funded civil rights compliance programs in the Federal Government. Moreover, ORS has not taken the few actions possible within the constraints of its resources which would have made its civil rights compliance effort maximally effective.¹⁹

To remedy this problem, we recommend a marked restructuring of the civil rights compliance program under general revenue sharing. The draft bill should require the Secretary to delegate to other agencies such duties as data analysis, complaint investigation, compliance reviews, and negotiations, making clear that the Secretary of the Treasury will retain responsibility for drafting regulations and guidelines, and taking enforcement action.

To implement this expanded program, the President should request from Congress for fiscal year 1976 an appropriation of \$7.5 million to be used to provide at least 300 additional positions for the civil rights compliance program under general revenue sharing. The draft bill should direct the Department of Justice to take the lead in the immediate development of standards for a Government-wide civil rights compliance program under general revenue sharing. In particular, DOJ should be required to review for approval all Department of Treasury civil rights regulations and guidelines and ensure that they set appropriate standards for the conduct of data collection, affirmative action, compliance reviews, and complaint investigations. DOJ should also oversee the delegation by ORS of its civil rights monitoring function to other Federal agencies, ensuring that delegation of responsibility is made by subject area; for example, police departments to the Law Enforcement Assistance Administration of the Department of Justice, and health programs to the Department of Health, Education, and Welfare. The additional positions recommended should be allocated among such agencies in order to provide the staff necessary for the assumption of these additional responsibilities.

Finally, the Commission recognizes that even if all of its recommendations concerning the enforcement of non-discrimination requirements were incorporated into the proposed extension of the act, there still might occur cases of illegal discrimination which would escape Federal detection and rectification. For this reason, the Commission reiterates the recommendation it made five years ago, namely, that private individuals subjected to discrimination should be empowered by the act to initiate litigation in Federal District Court for appropriate relief, including recovery of treble damages, for intentional noncompliance with Federal nondiscrimination requirements. This remedy would be available to the victims of discrimination who have exhausted available administrative remedies but who still have not obtained legal relief.

¹⁷ Office of the Federal Register, National Archives and Records Service, General Services Administration, *Public Papers of the President, Richard Nixon, 1971*, Annual Message to the Congress on the State of the Union, Jan. 22, 1971, 50, 54 (1972).

¹⁸ *To Provide Fiscal Assistance*, *supra* note.

¹⁹ *Id.* at 1.

SECTION 123 (a) (5) (D). COMMENT ON PROPOSED AMENDMENT AND RECOMMENDED
ALTERNATIVE AMENDMENT

notwithstanding paragraph (4), provide notice and opportunity to the residents so that they may give recommendations and views on the proposed expenditures of all funds made available under subtitle A in a public hearing or in such other manner as the secretary may prescribe by regulation;

The Commission believes that the amendment requiring State and local governments to hold public hearing on proposed expenditures or to seek the view of local residents in some other manner prescribed by the Treasury represents an improvement in the act. The Commission believes, however, that the amendment could be strengthened and its effectiveness increased by addition of the following underlined phrase: "notwithstanding paragraph (4), provide notice and opportunity to the residents so that they may give recommendations and views on an ongoing basis throughout the decision-making process on the proposed expenditures of all funds made available under subtitle A in public hearings or in such other manner as the Secretary may prescribe by regulation:".

Mr. FLEMING. Some of the Commission's concern with revenue sharing relate to the equity of the present allocation formula and the matter of census undercounts. Today, however, I will focus my testimony on the present statutory requirement against discrimination and its enforcement.

REQUIREMENT OF NONDISCRIMINATION IN REVENUE SHARING

Section 112(a) of the State and Local Fiscal Assistance Act provides:

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity funded in whole or in part with funds made available under (this act).

This clear and unequivocal prohibition against discrimination in programs or activities funded under the general revenue sharing program reflects the legal and moral responsibility of the Federal Government to insure equal opportunity to all citizens.

After 3 years and the disbursal of billions of revenue-sharing dollars, however, it is abundantly clear that the Federal Government has failed to effectively enforce section 112(a) of the State and Local Fiscal Assistance Act and to thereby fulfill its constitutional obligations.

DISCRIMINATION IN PROGRAMS AND ACTIVITIES FUNDED BY
GENERAL REVENUE SHARING

In the report "To Provide Fiscal Assistance," the Commission concluded:

Abundant evidence indicates that discrimination in the employment practices and delivery of benefits of State and local governments is far reaching, often extending to programs funded by general revenue sharing.

The Commission's conclusion has been verified subsequently through the research of other governmental and private agencies that have examined revenue sharing funded programs and activities in a number of State and local jurisdictions.

The study "Equal Opportunity Under General Revenue Sharing" published under the sponsorship of the League of Women Voters Education Fund, the National Urban Coalition, the Center for Community

Change, and the Center for National Policy Review; the report "Civil Rights Under General Revenue Sharing" prepared by the Center for National Policy Review under a National Science Foundation grant; and "the Case Studies of Revenue Sharing in 26 Local Governments" prepared by the Comptroller General of the United States, all document widespread discrimination in programs funded by revenue sharing in direct violation of section 122(a).

ENFORCEMENT OF THE NONDISCRIMINATION REQUIREMENT

Federal responsibility for insuring compliance with section 122(a) of the State and Local Fiscal Assistance Act is shared by the Department of the Treasury and the Justice Department.

Although the Justice Department is authorized to bring suits to enforce section 122, responsibility for the administrative enforcement of the nondiscrimination provision resides with the Treasury Department.

Based upon the extensive analysis set out in "To Provide Fiscal Assistance," the Commission concluded that administrative enforcement of the nondiscrimination requirement by the Department of the Treasury was negligible and ineffective.

The Department of the Treasury's administrative enforcement obligations with respect to section 122 fall into three main categories. The act requires the Secretary of the Treasury to:

1. Prescribe such regulations as may be necessary or appropriate to carry out the provisions of the act.
2. Determine the compliance status of recipient governments with the act.
3. Secure voluntary compliance or impose sanctions to remedy violations of the nondiscrimination provision.

REGULATIONS

The importance of comprehensive and intelligible regulations, especially in the area of nondiscrimination, cannot be overemphasized. As the Assistant Attorney General for Civil Rights noted:

Only when State and local agencies know what is expected of them, when they have a thorough understanding of what the Federal laws and the Constitution require, can they carry out their proper role in the Federal system.

Lack of understanding appears especially prevalent among ORS' smaller recipients. More than half of the 39,000 recipients of GRS number 1,000 or fewer in population, and 80 percent of all GRS recipients have populations of 2,500 or less.

It stands to reason that many of these smaller recipients in particular do not possess civil rights expertise because they may have had little or no previous Federal program experience and thus lack a functional knowledge of title VI of the Civil Rights Act of 1964 which prohibits discrimination in access to and provision of federally funded services.

Despite the obvious need for comprehensive and explicit regulations, the Commission found that:

The portion of ORS' regulation relating to civil rights does not set forth in an adequate manner what is required by ORS and recipient governments to insure nondiscrimination under the act.

While time does not permit a full critique of the regulations, a few of their more glaring shortcomings should be mentioned.

The regulations currently in effect do not provide detailed examples of what constitutes prohibited discrimination. They provide no meaningful guidance in the areas of employment or sex discrimination. While the Department's latest set of proposed regulations published in the July 24, 1975, Federal Register offer greater guidance than in these areas, they, too, are inadequate.

For example, the proposed regulations do not require conformity to EEOC's detailed guidelines on employment selection procedures. Likewise, while the proposed regulations state that recipients are expected to conduct a self-evaluation of their employment procedures, they neither set out nor cite OFCC's guidelines on self-evaluation which would assist recipients in complying with the Department's expectations.

More fundamentally, the proposed guidelines do not require local governments to develop an affirmative action plan in conjunction with their self-evaluation to overcome the effects of past discrimination.

The latest proposed regulations contain more information on sex discrimination than the currently operative regulations. Nevertheless, they focus exclusively on sex discrimination in employment and fail to provide recipients with needed information as to how they can insure nondiscrimination on the basis of sex in the provision of services.

Finally neither the current nor the latest proposed regulations set out time limits for the accomplishment of each stage of enforcement activity. The absence of specified time limits generates uncertainty among recipients, protracts the enforcement process, and most importantly, denies the victim of prohibited discrimination the assurance of timely relief.

DETERMINATION OF COMPLIANCE STATUS

In "To Provide Fiscal Assistance" the Commission concluded that ORS procedures for assuring itself of compliance by its recipients have been deficient. We found that in the first 20 months of ORS' existence, compliance status with respect to the nondiscrimination provision of section 122 was determined largely on the basis of assurances, one-time compliance visits to about 100 recipients receiving the largest GRS payments, and complaint processing.

Concerning each of the primary means ORS relied upon to determine compliance, the Commission further noted:

The assurances consist merely of a form statement signed by the recipients that that there will be compliance with the act. The questions asked on the compliance visits were superficial, relating primarily to recipients' capabilities for achieving compliance rather than the extent of compliance with the nondiscrimination provision. For many months ORS made no special effort to inform the public how or where to file complaints and as of October 1974, ORS had received only 93 civil rights complaints. Although complaint volume is a poor indicator of civil rights compliance, ORS has cited the low volume of complaints as evidence of compliance.

Moreover, ORS has been slow to resolve the complaints it receives and ORS appears to have been willing to consider complaints as resolved without sufficient evidence that the violations uncovered have been corrected.

At the time of our study we found that ORS had not conducted a full-scale compliance review unrelated to a discrimination complaint

even though such reviews are one of the most effective means of determining the compliance status of jurisdictions under the act.

To date the Justice Department has conducted 26 compliance reviews of revenue sharing recipients under the Attorney General's independent authority and 18 other reviews at the request of the Office of Revenue Sharing. To the best of our knowledge, however, ORS civil rights compliance staff has yet to conduct a single independent compliance review.

Rather than establish a vigorous independent compliance investigation program, the Office of Revenue Sharing has stressed its intention to rely primarily on existing information resources to determine the compliance status of jurisdictions under the act.

Before discussing ORS' use of existing information resources in its compliance program, I would like to briefly restate the Commission's basic position on this important subject.

As this committee knows, the Commission has consistently advocated and supported cooperation between governmental agencies charged with civil rights responsibilities to minimize confusion and duplication of efforts and to maximize enforcement effectiveness.

We fully recognize that cooperation does not just happen and that it requires careful planning and administrative initiative. Most importantly, the Commission maintains that establishment of a cooperative enforcement program does not relieve an individual agency of the responsibility to effectively carry out its statutory obligations.

To determine the compliance status of State and local governments with the act, the Office of Revenue Sharing has made some effort to tap three existing sources of information:

- (1) Audits of recipient governments made pursuant to the act;
- (2) State human rights agencies, and
- (3) Other Federal agencies responsible for securing compliance with Title VI and Title VII of the Civil Rights Act of 1964.

Careful analysis of ORS' use of these information sources reveals a number of deficiencies—deficiencies which prevent the Secretary from adequately assessing the compliance status of jurisdictions with the nondiscrimination requirement of the act.

AUDITS

The State and Local Fiscal Assistance Act authorizes the Secretary of the Treasury to accept State audits of revenue sharing expenditures if he determines that the audits and the procedures used in their preparation are sufficiently reliable to determine compliance with all requirements of the act.

In October 1973 ORS published its Audit Guide and Standards for Revenue Sharing Recipients which contains seven questions pertaining to civil rights compliance. Our analysis of the Audit Guide revealed that it was inadequate for telling auditors, most of whom have not been trained to detect the manifold forms of race and sex discrimination, how to make a meaningful determination of civil rights compliance.

Moreover, the Audit Guide is inadequate for any systematic determination of possible noncompliance. Auditors are not directed to collect and review racial and ethnic data by sex of employees or the eligi-

ble and actual beneficiary population for programs and activities funded with GRS funds. Aside from the specific coverage of siting of facilities which is itself limited only to instances where siting is obviously discriminatory in effect, no specific inquiry is designed to determine actual compliance.

The inadequacy of the Audit Guide is only one of the defects in ORS' audit system. ORS permits the recipients' chief executive officers, where audits disclose no instance of possible noncompliance, the option of either forwarding to ORS a copy of the audit report or signing and forwarding a statement that the audit has been completed and that it disclosed no instances of noncompliance.

Further, although ORS envisions a review of State audits from time to time as necessary to insure quality, such a control system has not been implemented to date.

STATE HUMAN RIGHTS AGENCIES

Subsequent to publication of "To Provide Fiscal Assistance," ORS signed several agreements with State human rights agencies for the exchange of information relevant to discrimination in revenue-sharing programs.

While the Commission wholeheartedly supports such cooperation, we have no reason to challenge the finding of the National Center for Policy Reviews that little can be expected from the present ORS agreements in the way of realistic nondiscrimination enforcement.

Indeed the Center's analysis of the negotiated agreements, ORS' standards for selecting cooperating agencies, and the often limited statutory authority and resources of state human rights agencies parallels the information gathered by the Commission.

FEDERAL AGENCIES

DEPARTMENT OF JUSTICE

Late last month the Office of Revenue Sharing and the Civil Rights Division of the Justice Department signed a memorandum of understanding regarding coordination in the enforcement of the nondiscrimination provision of the State and Local Fiscal Assistance Act.

Although Commission staff has not completed an evaluation, a cursory examination reveals several apparent shortcomings. The agreement does not fully articulate:

1. What constitutes compliance with the act so that there is a uniform standard for State and local governments.

2. Standards for investigation so that in the event that ORS finds it necessary to refer a case to DOJ for civil action, DOJ will be able to rely upon the ORS investigation.

3. The circumstances which will lead ORS to refer to DOJ the case of a noncomplying recipient instead of proceeding with administrative enforcement action.

After our detailed analysis of the memorandum of understanding has been completed, we will be happy to provide a copy to this subcommittee.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

On October 11, 1974, ORS and the Equal Employment Opportunity Commission entered into an agreement to establish a joint working relationship designed to enable both agencies to resolve complaints of employment discrimination against public employers and their contractors.

The agreement provides the following:

EEOC will, upon request, furnish ORS any information obtained by EEOC pursuant to section 709(c) of the Civil Rights Act of 1964, as amended.

EEOC will routinely furnish copies of letters of determination and decisions involving employers in revenue-sharing activities to ORS.

Upon receipt of a letter of determination or a decision indicating that EEOC has found probable cause to believe that discrimination exists in a GRS-funded activity, the Director of ORS will proceed to seek to secure compliance, in accordance with ORS' regulations.

In January of this year ORS and EEOC entered into a supplementary agreement to conduct a broad scale analysis of EEOC data to detect potential violations of the act.

While the Commission believes that both agencies should be commended for the considerable efforts necessary to achieve these agreements, we must note a fundamental deficiency in the agreements—the absence of specific compliance and enforcement standards.

TITLE VI AGENCIES

Although a number of Federal agencies have civil rights responsibilities pursuant to title VI which parallel those of ORS, to date ORS has entered into a cooperative agreement with only one—the Department of Health, Education, and Welfare.

This agreement is deficient in that it does not address such fundamental issues as standards for compliance, scope and frequency of compliance reviews and methodology for complaint investigation. As a final comment on this subject, I would like to note that until the cooperative agreements between ORS and other Federal agencies specifically address these fundamental issues, they cannot guarantee a reduction in duplicative activity and a corresponding waste of tax dollars, and at the same time an effective enforcement of the civil rights protection provided by law.

ENFORCEMENT OF THE NONDISCRIMINATION REQUIREMENT

The Secretary of the Treasury's authority to enforce the nondiscrimination requirement of the State and Local Fiscal Assistance Act is set out in section 122(b) with which this subcommittee is familiar.

At the outset two points should be noted about section 122(b). First, this section provides the Secretary with broad authority to enforce the nondiscrimination requirement, and second, it confers upon the Secretary broad discretion as to the manner in which the available enforcement powers shall be used. To date there is considerable evidence that this discretion has not been exercised so as to effectively obtain compliance with the act.

The *Robinson v. Shultz* and the *United States v. City of Chicago* litigation exemplifies ORS' failure to exercise its discretion and effectively enforce the law. I would like to restate the chronology of events in this case and at the same time note how the questionable exercise of discretion at critical stages of this case may be indicative of the Department's general enforcement approach.

In September 1973, Renault Robinson, a black Chicago police officer, the Afro-American Patrolman's League, and the NAACP filed a complaint with the Department of the Treasury alleging that the Chicago Police Department which received substantial revenue-sharing funds—approximately \$70 million during calendar year 1973—was guilty of racially discriminatory employment and promotion policies and practices.

The complaint included reference to a recent Law Enforcement Assistance Administration investigative findings of employment discrimination in the Chicago Police Department. The complaint asked the Secretary to conduct his own investigation to withhold future revenue-sharing payments. Records in the case show that ORS did conduct a civil rights investigation following receipt of the complaint in October 1973 which revealed evidence of discrimination within the police department.

Despite ORS' investigative findings, the Secretary did not officially determine the city of Chicago to be in noncompliance nor did he notify the Governor of the apparent violation.

In February 1974, Mr. Robinson, plaintiff, sued the Secretary of the Treasury to compel administrative enforcement of section 122. As a result of the suit the U.S. District Court for the District of Columbia ruled in April that the Secretary is under a nondiscretionary duty to follow the procedures of section 122(b) of the act.

Based upon ORS' own investigative finding of discrimination in the Chicago Police Department, the court ordered the Secretary to notify the Governor of Illinois of the Secretary's determination of noncompliance.

It is noteworthy that a court order was necessary to compel the Secretary to take the first step in the administrative enforcement process—notification of noncompliance—even though the Department's own investigation revealed noncompliance almost 6 months previously.

Pursuant to the court's order, the Secretary notified the Governor of Illinois and the mayor of Chicago of his determination of noncompliance. The city in turn denied the charges of discrimination.

On May 29, 1974, the Secretary took the second step in the enforcement process: He determined that voluntary compliance could not be negotiated and referred the charges to the Attorney General pursuant to section 122(b)(1). Two aspects of this action deserve comment.

First, the Secretary's determination that voluntary compliance could not be achieved was made in a timely manner. The Department's regulations provide:

If within a reasonable time, not to exceed 60 days, the Governor fails, or refuses to secure compliance, the Secretary is authorized:

First. To refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted;

Second. To exercise the powers and functions and the administrative remedies provided by title VI of the Civil Rights Act of 1964; or to take such other action as may be authorized by law.

The Secretary's timely action in the *Chicago* case contrasts sharply with a number of other instances where the Secretary has continued compliance negotiations without further enforcement action for up to 6 months after formal notification of noncompliance.

It may be significant that ORS' enforcement of the *Chicago* matter was the subject of a private suit whereas this has not been the case in most of the instances of protracted negotiations. Nevertheless, the Commission believes that compliance negotiations beyond 60 days violate the spirit if not the letter of the Department's regulations, and seriously erode the prohibition against discrimination.

The second significant aspect of the Secretary's May 29 action concerns his election of enforcement procedures. While referral of the charge to the Attorney General temporarily fulfilled the Secretary's statutory obligations, it nevertheless failed to provide those persons who complained of discrimination with immediate relief or any assurance that the Federal Government's next revenue sharing payment to the city would not be used to perpetuate further discrimination.

The ORS has taken the second step of enforcement in only two instances, *Chicago* and the State of Michigan, and in neither case has it elected to exercise its title VI authority to provide immediate relief through fund deferral.

As a result of the Secretary's May 29 refusal, the United States, in an action already pending in Federal court, sought and obtained leave to amend its complaint which charged racial discrimination in the *Chicago* Police Department under civil rights statutes to include allegations that the same conduct violated section 122(a).

Because the Justice Department did not seek injunctive relief with regard to the alleged revenue-sharing violation, ORS proceeded with its July payment to the city—a payment of approximately \$17 million.

In November 1974, the Federal court in *Chicago* found that the city's policies and practices with respect to the employment of patrol officers and the promotion of sergeants were racially and sexually discriminatory.

Despite this finding and despite the absence of a remedial court order agreed to by the city, ORS maintained that it had fulfilled its enforcement obligations and that it lacked authority to defer future revenue-sharing payments to the city.

To block the ORS from making a revenue-sharing payment of approximately \$14 million to *Chicago* in January, Mr. Robinson and the other plaintiffs once again sought in the District of Columbia Federal Court an order directing the temporary withholding of revenue-sharing payments to the city. On December 18, 1974, request was granted, and U.S. District Court for the District of Columbia enjoined the Secretary from making further payments until the "city of *Chicago* is subject to a final order" and has formally assured the Secretary that "it will comply to all respects with said order."

The court further enjoined future revenue-sharing payments until the Secretary has "monitored the actual compliance of the city of *Chicago* with said final order and filed a report with this court which shows

that the city has taken adequate steps to comply with nondiscrimination requirements and what such steps are." This order was subsequently reaffirmed this year.

The point of the Robinson litigation is clear: The Secretary has both the statutory authority and the constitutional duty to withhold revenue-sharing payments to prevent prohibited discrimination. This point appears, however, to have been lost in the Department's latest set of proposed regulations relating to enforcement of section 122.

The regulations, contrary to the court's April 1974 opinion, do not provide for deferral of revenue-sharing payments during a given entitlement period, pending an administrative hearing.

Further, even where a Federal court has found discrimination in a GRS funded program, the regulations permit—not require—deferral of entitlement funds pending entry—not acceptance—of an affirmative action order only if:

One. A violation of the nondiscrimination provision of this support of the act, section 122 was alleged in the complaint before the court;

Two. The court finds that the recipient government has violated the nondiscrimination provision of this subpart of the act; and

Three. The question of withholding has not been resolved by the court.

The latest proposed regulations do contain an enlarged section on assurances which ostensibly provide a means of dealing with jurisdictions that are determined to be in noncompliance. According to ORS, this section together with ORS technical memorandum 75-4—which does not have the force of regulation or law—provides that once a jurisdiction is found in noncompliance, they will not be able to receive funds in the next entitlement period until they assure the Director of ORS:

That the forthcoming entitlement period funds will be used in a manner which will not result in a violation that is similar to the violation that resulted from the use of previously received funds.

The limitations and loopholes in this approach are obvious. At best, ORS could only defer funds of the next entitlement period. Funds to be disbursed during the entitlement period in which the noncompliance was determined could not be withheld.

More significantly, the proposed approach does not guarantee that the noncompliance will be remedied before the funds for a future entitlement are approved. A jurisdiction with outstanding noncompliance in one program—its police or fire department, for example—might propose to use future funds in another program area.

In doing so, the jurisdiction could honestly claim to have assured ORS that expenditure of the funds would not result in a violation that is similar to the previous violation. As one person noted, this new approach merely compels jurisdictions to change horses on the merry-go-round of discrimination.

The Commission conclusions and recommendations:

It is clear that the current statutory prohibition against discrimination in the use of revenue-sharing funds and the enforcement of this law by the executive branch has been ineffective. The Commission believes, therefore, that as Congress takes up proposals to extend the revenue-sharing program it should consider additional legislation in the area of nondiscrimination. To this end, the Commission offers a number of recommendations:

One. Congress should expand the prohibition against discrimination to cover all programs and activities of a recipient jurisdiction.

The Comptroller General of the United States and numerous civil rights groups have testified to the need for such expansion to overcome the problem of fungibility; that is, tracing the use and actual effect of revenue-sharing money. Absent such an expansion, neither Congress nor the American people can be sure that revenue-sharing money is not being used to subsidize race, national origin, and sex discrimination.

Two. Congress should amend the law to require the deferral or withholding of revenue sharing funds to prevent their use in a discriminatory program or activity.

Our recommendation in this matter follows a series of Supreme Court decisions beginning with *Bolling v. Sharpe* which hold that the power and resources of the Federal Government cannot be used to support unconstitutional activities.

This recommendation is consistent with the *Robinson* case. The Commission maintains that the reference to title VI in the current State and Local Fiscal Assistance Act provides the Secretary of the Treasury with the authority to defer payment or revenue-sharing funds in the case of actual or threatened noncompliance with the act.

Because the Secretary has not exercised this discretionary authority, the law should be amended to provide for mandatory deferral.

Three. Congress should provide a private right of legal action including an award of attorney fees to enforce the prohibition against discrimination.

The Commission maintains that the Federal Government is responsible for insuring that its revenues do not subsidize discrimination. Nevertheless we believe that an aggrieved individual must have an opportunity to secure relief in those instances where the Government fails to carry out its obligations.

We further note that statutes which include a provision for the payment of legal fees have stimulated effective administrative enforcement of various Federal laws.

The Commission recognizes that these legislative recommendations would be implemented in the nondiscrimination section of H.R. 8329, a bill proposed by Representative Drinan of this subcommittee. Our staff is currently preparing an analysis of the nondiscrimination section of this bill for the Commission's consideration.

As soon as this analysis is completed, I would like to submit it to the subcommittee.

Mr. EDWARDS. Thank you, Mr. Flemming. It will be received.

Mr. FLEMMING. Thank you.

[See page 269 for information referred to.]

Mr. EDWARDS. Mr. Drinan?

Mr. DRINAN. Thank you very much, Mr. Chairman, and thank you, Mr. Flemming. Being personal for a moment, you saved the very best of your recommendations for the last. I commend you on your statement. It is one of the best we have had in these proceedings.

There are several things on which I want to elaborate, but one fundamental question is, it seems to me, do you think that the Congress intended the Office of Revenue Sharing to have different obligations at all under the Civil Rights Act than any other agency that we have created?

Mr. FLEMMING. We do not think that Congress intended that it should work out that way.

Mr. DRINAN. Does the Commission believe that the limitations presently found in title VI, which go directly only to the funded activity, impose, by implication, a restriction against our broadening the revenue sharing provisions to all activities?

Mr. FLEMMING. No.

Mr. DRINAN. Thank you.

Do you have any thoughts about the automatic deferral after 60 days of negotiation?

That is one of the points in my bill on which apparently the Commission has difficulty. You see, Doctor, we are so interested in everything the Commission states that I read your first version. You raise a question here about my bill, H.R. 8329; namely, the effect of this provision for mandatory deferral of revenue sharing.

I give you the opportunity to elaborate on whatever misgivings you might have.

Mr. FLEMMING. First of all I would not want to suggest that the Commission as a commission has misgivings. Some of the issues are subissues that are raised in this particular provision in your bill, have not actually been discussed by the full Commission.

I try to make sure that when I appear before a committee that I am presenting the views of the full Commission.

It is clear that our Commission, on the basis of previous reports, does support mandatory deferral of revenue sharing funds pending an administrative hearing to determine whether they are being used in a discriminatory program or activity thereby preventing the use of Federal revenue sharing funds in support of such program or activity.

The kind of questions we would want to take a look at are: One, whether general revenue sharing funds should be withheld for 120 days pending start of a hearing for discriminatory violations in programs or activities not funded by general revenue sharing.

Second, whether there is a constitutional issue or whether a Federal court would uphold mandatory automatic deferral absent a showing that discrimination was present in all programs and activities subject to the deferral. Pending the completion of the analysis of those issues and one or two others, the Commission believes that deferral should be mandatory only when the noncompliance occurs in a revenue sharing program.

That is as far as we have gone up to the present time. Back in 1971 when the Commission first looked into this, it said the sanction of cutting off all revenue sharing funds from a State in the case of discrimination in a single program or activity probably would be too drastic.

But I do not submit that as a position of the present Commission because we have not had the opportunity of addressing ourselves to it. We will do it as a commission. We will report back to you.

Mr. DRINAN. I know that the Commission submitted comments on the ORS proposed nondiscrimination regulations which I think they put forth in June or July. Have you heard back from them as to any inclusion of the recommendations or any possible discussion?

Mr. FLEMMING. We have not.

Mr. DRINAN. As you know, the ORS suggested 2 years ago, and keeps suggesting, that it has complaint oriented enforcement proc-

esses. Would you elaborate a bit more on that than is contained in your paper or is contained in the two studies?

Mr. FLEMMING. This is an issue that confronts us every time we get into oversight investigations and consideration of oversight reports. Our feeling is this: That we are not dealing with an either/or type of situation.

We are dealing with a both/and type of situation. When citizens file complaints those complaints should be considered, should be processed and should be processed expeditiously and vigorously.

But in addition to that nothing should stand in the way of taking an overall look at how a particular jurisdiction is dealing with the issue of nondiscrimination, whether we are talking about fair housing, employment, or in this case, whether we are talking about general revenue sharing.

I am out of sympathy with those who try to say this is an either/or issue. Both types of activity have got to be carried forward and carried forward vigorously.

Mr. DRINAN. I have included religion as the basis of discrimination in my bill. That is not contained, as I recall, in title VI, but it is contained in several Federal civil rights statutes. Would you or would the Commission have any thoughts on that?

Mr. FLEMMING. We would favor the inclusion of religion.

Mr. DRINAN. Thank you very much.

My time has expired.

Mr. EDWARDS. The gentleman from New York, Mr. Badillo.

Mr. BADILLO. Dr. Flemming, I want to commend you for your statement and you and the Commission for the two reports that you have issued. I hope that every Member of Congress has read them because the recommendations are very important. I hope, too, that the Treasury Department has read them. Has there been any action taken by the Treasury Department on the recommendations that you made in either one of the two reports?

Mr. FLEMMING. In my direct testimony we did note a certain amount of activity following the issuance of our reports. But as you recall, we do not feel that the steps that have been taken are adequate.

Mr. BADILLO. They have not taken any action either on the comments that you made to the proposed regulations?

Mr. FLEMMING. As far as we know, they have not. There has been no contact with us on those matters.

Mr. BADILLO. Overall, if you had the authority to pass upon the proposed regulations, would you reject them as being adequate?

Mr. FLEMMING. In their present form; yes.

Mr. BADILLO. I want to clarify recommendation No. 2 that you make that the law should be amended to provide for mandatory deferral. Exactly at what point would the mandatory deferral take place?

Mr. FLEMMING. Mr. Lyons?

Mr. LYONS. That would follow a finding of noncompliance. Following that, a period in which it was further determined that the jurisdiction would not voluntarily come into compliance, for instance, of 60 days that the current regulations provide as a general guide.

Mr. BADILLO. Who would do the finding of noncompliance? We had testimony yesterday about the Boston case where there actually was a district court decision that Boston was in violation of the law.

Then that was appealed to the court of appeals and the appeals have held. There was an appeal in the Supreme Court. The Office of Revenue Sharing felt that they were not necessarily bound by a court decision.

Mr. DRINAN. The U.S. Supreme Court denied review in June of this year, so it is final.

Mr. BADILLO. I am only pointing out that it can happen that the appeal process may take several years. At what point should we mandate in the law that there should be a final determination?

Mr. FLEMMING. It is a very interesting question. I assume that what lies back of your question is the question of whether or not it should be mandated, let's say, after a finding by a U.S. District Court.

Here you have to weigh the rights that people have to appeal under—

Mr. BADILLO. Ordinarily when you have a finding, that finding stands until a reversal, if ever. What we are talking about here is that years can intervene and almost any lawyer can defer a matter for several years.

Mr. FLEMMING. Our objective and your objective is the same, namely, to get this implemented as quickly as possible. I would like to think a little bit about that particular question and supply an answer. I would like our general counsel to take a look at this.

Mr. BADILLO. The proposed regulations merely say that in the event there is a court decision that then the ORS will review the whole matter and they may take action.

The proposed regulations don't even bind the Office of Revenue Sharing when there is a court decision.

Mr. FLEMMING. We took issue with that part of the regulation. I will insert at this point in the record our comment on that specific regulation.

[The material referred to follows:]

EXCERPT FROM COMMENTS OF THE U.S. COMMISSION ON CIVIL RIGHTS ON THE ORS PROPOSED NONDISCRIMINATION REGULATIONS (SEE FEDERAL REGISTER OF JULY 24, 1975)

K. Procedure for effecting compliance

Section 51.59 of the proposal sets out ORS' procedures for effecting compliance. Our principal objections to this proposal are: (1) it makes no provision for deferral of funding in connection with administrative enforcement of the non-discrimination requirement of the Act, although a Federal court has affirmed this power;³⁰ (2) the provision for deferral in connection with court proceedings makes deferral discretionary rather than mandatory and automatic; and (3) unwarranted limitations are imposed on the exercise of this deferral power. This Commission has previously detailed these and other objections for the Office of Revenue Sharing.³¹ Because we adhere to them after reconsidering section 51.59 in conjunction with the other amendments proposed in July 1975,³² we incorporate by reference in this submission a copy of our earlier comments, which are enclosed as Attachment E, and again invite your attention to them.³³

³⁰ Robinson v. Shultz, Order of April 14, 1974, C.A. No. 72-248 (D.D.C.).

³¹ Letter from John A. Enggs, Staff Director, U.S. Commission on Civil Rights, to Graham W. Watt, Director, Office of Revenue Sharing, Department of the Treasury, Mar. 17, 1975.

³² The invitation to comment on the regulation proposed in July 1975 suggested such reconsideration of the portion containing procedure for effecting compliance. 40 Fed. Reg. 30974 (July 24, 1975).

³³ The first among our objections of March 1975, that the then-proposed section 51.32(f)(1) omitted the phrase "to take such other action as may be authorized by law" from the listing of the powers of the Secretary for dealing with noncompliance, appears to have been acted upon. See section 51.59(a)(3) of the present proposal. The remainder of our objections are still pertinent.

ATTACHMENT E

MARCH 17, 1975.

MR. GRAHAM W. WATT,
Director, Office of Revenue Sharing, Department of the Treasury,
Washington, D.C.

DEAR MR. WATT: The following comments pertain to the Department of the Treasury's proposed amendments to section 51.32(f) of the regulations contained in Part 51 of Subtitle B of Title 31, Code of Federal Regulations, which became effective April 5, 1973. The proposed amendments concern the Department's enforcement of the non-discrimination provision contained in Section 122(a) of the State and Local Fiscal Assistance Act of 1972.

As you know, the Commission recently released Volume IV of the Federal Civil Rights Enforcement Effort—1974, "To Provide Fiscal Assistance." This report and "Making Civil Rights Sense Out of Revenue Sharing Dollars" form the basis for our comments here.

We have concluded in "To Provide Fiscal Assistance" that ORS's civil rights compliance program has been fundamentally inadequate. Abundant evidence indicates that discrimination in the employment practices and in the delivery of benefits of State and local government programs is far-reaching, often extending to activities funded by general revenue sharing. Nonetheless, ORS has one of the most poorly staffed and funded civil rights compliance programs in the Federal Government. Moreover, ORS has not taken the few actions possible within the constraints of its resources which would have made its civil rights compliance effort maximally effective.

As the following specific comments make clear, the Commission does not believe that the proposed amendments to section 51.32(f) are adequate to insure effective enforcement of the prohibition against discrimination in programs partially or completely funded by revenue sharing money. The Commission, therefore, urges that the proposed amendments not be adopted but rather be revised further in accordance with our comments and criticisms.

A copy of both reports are enclosed along with our comments. If you wish to clarify any matter in our comments or the reports, please call Bud Blakely (254-6626).

Sincerely,

JOHN A. BUGGS,
Staff Director.

OBJECTION TO PROPOSED REGULATION SECTION 51.32(f) (1)

Section 122(h) of the State and Local Fiscal Assistance Act provides the Secretary of the Treasury with the legal authority necessary to effectuate compliance with the non-discrimination provision contained in Section 122(a) of the Act. Section 122(b) reads in part: the Secretary is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law.

Section 51.32(f) (1) of the current regulation mirrors the act and provides in pertinent part that the Secretary is authorized: (1) To refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; (ii) to exercise the powers and functions and the administrative remedies provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (iii) to take such other action as may be authorized by law.

The Commission objects to the proposed regulation 51.32(f) (1) because it eliminates reference to the Secretary's authority to "take such other action as may be provided by law" to secure compliance with Section 122(a) of the act. This omission is inexcusable. The proposed regulations like the current regulations must reflect the full range of authority provided to the Secretary by the Act. Just as an executive officer cannot appropriate powers that were not delegated to him or her by Congress, neither can an executive officer abandon those powers which Congress has seen fit to delegate.

OBJECTION TO PROPOSED REGULATION SECTION 51.32(f) (1) (ii)

(ii) To initiate an administrative hearing pursuant to the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). An order of an administrative law judge to withhold temporarily, to repay, or to forfeit entitlement funds, will not become effective until:

(A) There has been an express finding on the record, after notice and opportunity for hearing of a failure by the recipient government to comply with a requirement of this section.

(B) At least 10 days have elapsed from the date of the order of the administrative law judge. During this period, additional efforts will be made to assist the recipient government in complying with this regulation and in taking appropriate corrective action.

(C) Thirty days have elapsed after the Secretary has filed with the Committee on Government Operations of the House of Representatives and the Committee on Finance of the Senate a full written report of the circumstances and the grounds for such action. The time limitations of subparagraphs (B) and (C) can run concurrently.

(D) The Secretary has notified the recipient government that, in addition to whatever sanctions have been imposed by the administrative law judge, the Office of Revenue Sharing will withhold payment of all entitlement funds until such time as the recipient government complies with the order of the administrative law judge.

Further, the amount of the forfeiture or repayment of entitlement funds, if any, will be limited to the program or activity in which the noncompliance has been found. Such funds shall be collected by a downward adjustment to future entitlement payments and will be deposited in the general fund of the Treasury. If the Secretary determines that adjustment to future entitlement payments is impracticable, he may refer the matter to the Attorney General for appropriate civil action to require repayment of such amount to the United States.

The Commission objects to the proposed regulation section 51.32(f)(1)(ii) because it contains no provision for the Secretary to exercise his Title VI authority to temporarily withhold or defer revenue sharing payments pending completion of the administrative hearing procedures specified under Title VI.

The Commission views the absence of provisions for fund deferral in this section of the proposed regulation as especially grievous given the fact that a Federal court has already repudiated the position taken by ORS officials that they lack the statutory authority to defer funds prior to completing the administrative procedures specified in Title VI.

One of the central issues in the case of *Robinson v. Schultz* concerned the authority of the Secretary to defer revenue sharing payments. Plaintiffs in the case sought to have ORS defer further revenue sharing payments to the City of Chicago after the ORS, through its own investigation, found evidence of discrimination within the Chicago Police Department, the principal recipient agency of the city's revenue sharing allocation. In support of their position, plaintiffs cited legal precedent for the deferral of Federal assistance prior to completion of Title VI administrative proceedings. The Director of the ORS responded that he was not authorized by law to defer funds and that revenue sharing differed from other programs of financial assistance where deferral by Federal agencies had been approved by the courts.

On April 4, 1974, the court ruled in favor of the plaintiff's claim and declared that "Section 122(b)(2) of the State and Local Fiscal Assistance Act, 31 U.S.C. § 1242(b)(2), confers upon the Secretary of the Treasury the power to defer payment of federal revenue sharing funds pursuant to a formal administrative hearing as provided by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1."¹

The fact that the proposed regulations ignore the authority of the Secretary to defer funds is made all-the-more inexplicable by the fact that the Director of ORS in the *Robinson* proceeding cited the existing regulations as proscribing deferral. Now that the statutory authority of the Secretary to defer funds has been affirmed through federal adjudication, the Office of Revenue Sharing bears a responsibility to enact regulations which provide for the exercise of that power.

The importance of the power to defer revenue sharing funds prior to completion of the Title VI administrative procedures cannot be overemphasized. The deferral power has been used by other Federal agencies to effectuate timely compliance with nondiscrimination statutes and to prevent the further expenditure of federal monies in violation of those statutes. In this regard, it is especially noteworthy that the Assistant Attorney General of the United States for Civil Rights suggested that the ORS modify its regulations to provide for the exercise of the deferral power. On March 30, 1973, Mr. Pottinger wrote to ORS:

¹ *Robinson v. Schultz*, Order of April 4, 1974, C.A. No. 74-248 (D.D.C.).

"A provision in Section 51.32(f) (1) allowing the Secretary to initiate enforcement proceedings in case of threatened noncompliance, as well as past or present noncompliance, may be helpful. Such a provision is standard in Title VI regulations. A provision permitting deferral of payments pending a hearing such as that exercised by agencies under Title VI, may be appropriate. Such a deferral need not constitute a forfeiture, and may be made subject to the type of limitations imposed on the Commissioner of Education under Title VI 42 U.S.C. 2000d-5."²

We concur with the Assistant Attorney General's suggestion that the regulations should provide for the initiation of enforcement proceedings "in case of threatened noncompliance, as well as past or present noncompliance."

Finally, the Commission believes that Section 51.32(f) (1) (ii) should specify the kinds of evidence of noncompliance (in addition to the evidence provided for by the unduly restrictive set of circumstances outlined in the proposed Section 51.32(f) (2)) which warrant the Secretary's use of Title VI enforcement powers. Evidence of discrimination in a program partially or completely funded by revenue sharing money as demonstrated by any of the following should trigger immediate deferral and initiation of administrative proceedings by the Secretary.

- * a finding of noncompliance based upon an investigation by the Department of the Treasury.
- * a finding of discrimination based upon an investigation or administrative hearing by any other Federal agency.
- * a lawsuit filed by the Department of Justice alleging discrimination.
- * a finding by state court or human rights commission of discrimination.
- * a law suit filed by a private party which sets forth a *prima facie* case of discrimination.

OBJECTION TO PROPOSED REGULATION SECTION 51.32(F) (2)

(2) The Secretary may immediately defer the payment of entitlement funds to a recipient government pending the entry of an affirmative action order by a Federal court.

The Commission urges ORS to revise the language of this proposed rule so that it reads: "The Secretary shall (rather than 'may') immediately defer the payment of entitlement funds. . . ." As we have argued elsewhere, the Fifth Amendment of the Constitution clearly proscribes Federal support of discrimination. Therefore, Federal officials must, where reasonable persons would agree that nondiscrimination provisions would most likely be violated if the funds were provided, decline to allocate such funds until the matter of noncompliance is resolved. (See *The Federal Civil Rights Enforcement Effort—1974*, Vol. IV, *To Provide Fiscal Assistance* 88 (February 1975).)

OBJECTION TO PROPOSED REGULATION SECTION 51.32 (F) (2) (I) & (II)

(I) a violation of the nondiscrimination provision of this Section or the Act (Section 122) was alleged in the complaint before the court;

(II) the court finds that the recipient government has violated the non-discrimination provision of this Section of the Act;

There is little persuasive reason to require that a violation of Section 122 of the State and Local Fiscal Assistance Act of 1972 (hereafter Revenue Sharing Act) be alleged in a complaint before the court. If a violation of some other civil rights law is alleged which, if true, would also constitute a violation of the Revenue Sharing Act, then deferral would be appropriate when the Secretary determines that general revenue sharing (GRS) funds were used in the program or activity under question. An audit would readily reveal whether GRS funds are involved. The conduct of an audit need not await the final outcome of court proceedings. Further, if an audit shows that GRS funds have been or are being spent in the subject program or activity, deferral action need not be postponed until express findings of a Federal court are issued.

OBJECTION TO PROPOSED REGULATION SECTION 51.32(F) (2) (III)

(iii) The question of deferral has not been considered by the court.

We object to this part of the proposed rule which would circumscribe ORS's authority to defer funds when the question of deferral is raised in court, except

² Letter from J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, to Mr. Graham W. Watt, Director, Office of Revenue Sharing, March 30, 1973.

when the court expressly orders ORS to defer funds. Many circumstances could arise in court proceedings to which ORS could point as cause, however unreasonable, for refusing to defer funds. Defendants could virtually raise the issue in order to avoid the remedy. In suits to which ORS is not a party, the court could hold that deferral is appropriate or required, but could not order ORS to defer funds. In suits to which ORS is a party, the court could consider deferral an appropriate remedy but decide to leave action to ORS's discretion. In these and other instances, ORS could refuse to defer funds solely on the grounds that the question was considered by the court, despite preferences expressed by the court.

OBJECTION TO PROPOSED REGULATION SECTION 51.32(F) (3)

The Commission objects to proposed regulation Section 51.32(f) (3). The Section is as follows:

(3) Nothing in these regulations is intended to preclude the United States, in a civil action initiated by the Attorney General of the United States pursuant to Section 122(c) of the Act, from seeking or a court from granting an order to require the repayment of funds previously paid under this Act, or ordering that the payment of funds under this Act be terminated or deferred. In addition, the Secretary may initiate the procedure provided for in paragraph (f) (1) (ii) of this Section against a recipient government which has been named as a defendant in such a civil action if it is the Secretary's judgment, after consultation with the Attorney General, that an administrative withholding of entitlement funds is an appropriate measure to ensure compliance with this Section.

In its notice of proposed rules, ORS states that the purpose of this subparagraph is to: . . . make clear that if the Attorney General has initiated a civil action against a recipient government under Section 122(c) of the Revenue Sharing Act, it is not required that the Secretary (of the Treasury) also initiate an administrative enforcement action.

The Commission objects to the proposed regulation Section because it makes the immediate deferral of funds a discretionary matter when the recipient government has been named as a defendant in a civil action filed by the Attorney General pursuant to Section 122(c) of the Act. The Commission believes that immediate deferral should be imposed when there is legal evidence of noncompliance. Rather than providing a justification for continuing revenue sharing payments, the fact that the Attorney General has filed suit under the Act only underscores the need for immediate deferral.

Mr. BADILLO. The question is what is a final determination which would mandate the Federal funds? No. 1, is it when there is a separate case brought in the court and No. 2, is it when a case is brought for review in the administrative agency? You have the question of time. In some of the cases brought to our attention it was indicated that some cases had been pending for 29 months. You can prolong these matters simply by not taking up the case.

There are legal matters, especially in criminal trials. We are now getting to the point where we mandate certain district attorneys to try cases within 60 days or dismiss the case because we have found that they have kept defendants in jail for a year or more.

We agree with your recommendation, but what specific statements would you make in terms of a final determination and when it should be binding?

Dr. FLEMMING. We will supply that.

Mr. EDWARDS. Your additional information, Mr. Flemming, will be made a part of the record.

[See p. 269.]

Mr. Butler?

Mr. BUTLER. Thank you, Mr. Chairman.

Mr. Secretary, I am sorry to be late here but I had read your testimony, your unexpurgated edition, so I did not feel too neglected.

I did get the benefit of Mr. Drinan's questioning. Heretofore he has asked a question and left before we could get the answer. I don't think I missed too much there.

I think I am pretty well aware of your positions. There are only two or three areas that concern us. It is the responsibility of your Commission to ferret out discrimination wherever it exists and suggest the most appropriate way to eliminate it.

Certainly you have been true to that. But in your efforts to suggest that we expand the prohibition against discrimination to cover all programs and activities, do you also consider the cost factors that might be involved in terms of auditing this to assure compliance?

The thing that concerns me is there are not resources enough to reaudit every activity of every local government. We are going to wind up, in effect, discriminating on those ones we zero in on and whether they are in compliance or noncompliance, if they are subject to careful review, it is a pretty expensive procedure. I wonder if you would explore that aspect of it.

Mr. FLEMING. Congressman Butler, I am happy to respond to that. I feel that as a nation we are at a point now where we are operating under many potentially effective laws in the civil rights area passed by the Congress, and many decisions rendered by the courts in the same area. We are being put to the test of whether or not we can implement constitutional provisions, laws passed by the Congress, and decisions rendered by the courts in such a manner as to convince minorities and women that rhetoric can be translated into action.

I appreciate the fact that recommendations we make from time to time, as a result of our oversight responsibility, do raise difficult problems in the field of administration, including the question of cost.

But personally, I feel that as a nation, we have got to make it clear to members of minority groups that we are going to give the enforcement of the constitutional rights of our people the highest priority.

I do not believe that we should fail to implement a program that we know would have a good chance of getting results as far as today's minorities and older persons are concerned because of the administrative difficulties involved or because of the cost involved.

I think, we should always be conscious of the question of cost and as we consider, let's say, two or three alternative approaches. If we feel that we can achieve our goal by taking approach A which will cost less than B and C, we should recommend course A, but only if we are convinced that course A will achieve the objective and not 10 or 15 years from now. We are just completing an oversight report on the implementation of title VI which we will be publishing and sending to the President and the Congress within a period of the next 6 weeks or so.

As we have worked on that report, I have become very much aware of the fact that, from an administrative point of view, we are not as committed as we should be to enforcing the rights of today's members of minority groups and women. So I recognize the validity of your point but I still feel that there is not anything that this Government does that should be given a higher priority than demonstrating to our people that a constitutional provision is something more than a piece of paper.

Mr. BUTLER. It is fair to say that really you have not explored that aspect of it? You don't consider that really your responsibility?

Mr. FLEMMING. We try to act—when we make recommendations of an administrative nature or of a legislative nature, we try to act in a responsible manner. As I say, we often have before us two or three proposals and if we are convinced that one proposal will do the job and maybe cost less than the others we will recommend the one that costs less provided we are convinced that it will do the job.

Mr. BUTLER. Apropos to your basic suggestion that prohibition against discrimination should cover all programs, would you expand that to all Federal programs other than revenue sharing programs?

Why stop at revenue sharing? Why not take every cent? Why not extend it to highways or food stamps?

Mr. FLEMMING. Our basic position is that Federal funds should not be used for purposes of discriminating and denying constitutional rights. I am willing—

Mr. BUTLER. I sympathize with that.

Mr. FLEMING. I am perfectly willing to take that basic principle and say it should be applied to all programs. As a Federal Government we should not stand by and permit Federal funds to be used for the purpose of perpetuating discriminatory practices.

The cost factor is relevant to this discussion. If the law is left as it is, the tracing of these funds is a costly operation. Whereas, if the Congress says to the States and local governments, look, if you are practicing discrimination in the operation of the State government or local government in connection with any programs financed with Federal funds then you come under the jurisdiction of the enforcement provisions of the general revenue sharing it could cost less from the standpoint of administrative expenditures.

Mr. BUTLER. My time has expired.

Mr. EDWARDS. The committee will recess at this time for 10 minutes. We have a vote.

[Voting recess.]

Mr. EDWARDS. The subcommittee will come to order. I recognize Ms. McNair.

Ms. McNAIR. Chairman Flemming, one of the things of course that ORS has pointed out to us continually is that they have entered co-operation agreements with the Justice Department, EEOC, and HEW. One of the Commission's recommendations goes far beyond that sort of coordination agreement and in fact suggests that ORS should delegate its enforcement responsibilities, at least investigatory responsibilities, to other ongoing agencies, that ORS should retain simply the policymaking kind of role.

Is that the Commission's position to date?

Mr. FLEMMING. Yes, and considering the present law, we feel that Treasury could step up its enforcement activity by utilizing that kind of an approach. In other words, they would delegate authority to act to the other departments in such matters as making investigations, subject of course to their policy determinations and also clearly sub-

ject to possible audit on their part to determine whether or not the agencies to which they delegated authority are really conforming to their policies.

Ms. McNAIR. One of the suggestions that we have been hearing is that possibly, if we are going to leave the policymaking role still with the Treasury, we should consider, because Treasury has been so bankrupt in their enforcement role, that we ought to consider a total transfer to the Justice Department.

Has the Commission made any assessment with respect to that type of recommendation and in making that sort of assessment, have you considered whether Justice has been vigorous in assuming its current responsibilities under section 122?

Mr. FLEMING. As I indicated in response to another question, the Commission right now is in the middle of developing an oversight report on title VI. The issue of where responsibility for coordination and direction of title VI enforcement should be placed is an issue that is being considered by the Commission. We are considering various alternatives. We will reach a conclusion as to the alternative that we prefer in our report. As I indicated that report will probably be transmitted to the President and the Congress within a period of the next 6 weeks.

Relating this to general revenue sharing, I am pretty sure I reflect the views of my colleagues on the Commission when I say we think that it makes good sense to pin responsibility for coordination and direction of all aspects of title VI, including general revenue sharing, at one point in the Government. At this time I am not in a position to present the Commission's view as to where we think responsibility should be fixed.

But we are going to make a definite recommendation on that in our title VI record report.

Ms. McNAIR. That will be a coordination recommendation?

Mr. FLEMING. I used the word coordination and direction. There is some dispute as to whether or not the Executive order Justice is operating under at the present time in connection with title VI gives them authority beyond coordination to the point where they could and should direct other departments and agencies to take certain steps.

We feel that probably the existing Executive order does provide Justice with authority beyond that of coordination. But we are not going to get effective implementation of title VI and general revenue sharing in our judgment unless responsibility for direction is fixed at one point in the Government.

Ms. McNAIR. Thank you, Dr. Fleming.

Mr. EDWARDS. The gentleman from Ohio, Mr. Kindness.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. Secretary, the references to constitutional obligations with respect to the expenditure of revenue sharing funds are interesting to me because I am not exactly sure that I understand the way in which those words are meant in your testimony. I would appreciate it if you would elucidate on this question.

It occurs to me and to many people today that there may very well be discrimination in the tax structure under which these revenues are raised, out of which revenue sharing funds are provided to local and State governments. It is a kind of de facto discrimination that may exist.

Has the Commission ever looked into that aspect of discrimination in the revenue sharing program then at all?

Mr. FLEMMING. No, we have not.

Mr. KINDNESS. That has not really been a part of the charge of the Commission up to this point?

Mr. FLEMMING. That is correct.

Mr. KINDNESS. But with respect to the constitutional obligations—I threw that other one in so you would have a little time to prepare.

Mr. FLEMMING. I think I know what you are referring to there and I would be glad to get back to that part of your question.

Mr. KINDNESS. In the absence of statutory provisions such as the nondiscrimination provisions in the revenue sharing law, would there be in your view a duty on the part of the Federal Government to enforce constitutional rights of individuals through revenue sharing or a program such as that, or any other Federal grant program?

Mr. FLEMMING. I have identified the portion of my testimony which I think deals with the issue that you have raised. I would be very glad to amplify it.

It is in connection with our discussion of the *Chicago* case. On page 18 we make this comment:

The point of the Robinson litigation is clear. The Secretary has both the statutory authority and the constitutional duty to withhold revenue sharing payments to prevent prohibited discrimination. This point appears, however, to have been lost in the department's latest set of proposed regulations relating to enforcement of the 122.

The regulations, contrary to the court's April 1974 opinion do not provide for deferral of revenue sharing payments during a given entitlement period, pending an administrative hearing.

There is reference to the constitutional duty, but another part of the testimony refers to what I believe is a basic principle, namely that the Federal Government has the constitutional obligation to make sure that Federal funds are not used for the purpose of denying persons their rights under the Constitution.

Mr. KINDNESS. That was my understanding of your statement earlier and I wondered if we could refine that point a little bit. That is far different from the recommendation or the effect of the recommendation of providing by statute that there must be purity in all programs involving Federal funds in order for general revenue sharing funds not to be deferred, to use the general revenue sharing program as the means for, in effect, an overall civil rights act. Would you care to comment on the difference there?

The *Chicago* case, it seems to me, refers to a situation in which it was found that general revenue sharing moneys were used in a discriminatory manner directly thus giving a clear statutory basis for the decision.

The constitutional aspect of it was thrown in, I think, sort of gratuitously and I have not developed an understanding of how that ties directly in the absence of statutory provisions. But if we went beyond that with revenue sharing being expanded, so to speak, as a means for enforcement of civil rights, would there be that constitutional duty without the statutory provisions?

I take it there would not be. At least there would be no reason to expand the statute if that were the case.

Mr. FLEMMING. Well, let's start with the assumption, of course, that State and local government officials, like Federal officials, have the obligation to protect the constitutional rights of the persons within their respective jurisdictions.

Then let's move from there to the question of a presumption relative to unconstitutional activities on the part of State and local governments when it comes to protecting these rights.

You are referring specifically to our first recommendation that Congress should expand the prohibition against discrimination to cover all programs and activities of a recipient jurisdiction.

Congress having decided to take Federal revenues and distribute them to the States and local governments could—with the understanding that State and local governments can use these funds in any way they so desire, could very well, it seems to us, take the position that if the State or local jurisdiction is following discriminatory practices, this would raise a question as to whether or not revenue sharing funds were being used in such a manner as to support discrimination.

We pointed out that the Comptroller General of the United States as well as civil rights groups have suggested the need for such an expansion to overcome the problem of fungibility, that is tracing the use and actual effect of revenue sharing moneys.

Having determined that the State and local jurisdictions are receiving general revenue sharing funds which they can distribute in any way they want, when you come to enforcing the law, how do you then identify areas where the revenue sharing funds are actually being used?

That is one of the questions raised by Congressman Drinan's amendment concerning which I indicated to him that the Commission was giving consideration. I indicated that after giving it further consideration, we would like to supplement our comments for the record.

I have no difficulty, in view of the nature of the general revenue sharing, with concluding that if there is discrimination being practiced within a State or local government, that the State or local government should be subject to having its use of the general revenue sharing funds questioned and looked at.

Mr. KINDNESS. My time has expired. Maybe my question was not very clear. Perhaps I will have an opportunity to try again.

Mr. EDWARDS. The time of the gentleman has expired.

We have another witness this morning, so I will respectfully suggest we move along as best we can.

Mr. Klee?

Mr. KLEE. Thank you, Mr. Chairman.

Earlier, the gentleman from New York raised the problem and advocated that the Office of Revenue Sharing should mandatorily defer funds upon the finding by a Federal district court of discrimination.

Chairman Flemming, presumably the Federal district court in its equitable powers chose not to impose the remedy of deferral.

Presumably the plaintiffs in the case did not ask for that remedy and it again was not given. Essentially we have a situation where a court and the plaintiffs in its wisdom have not sought a method of relief. Yet the program being advocated and the remedy you are advocating is on a finding of discrimination, the Office of Revenue Shar-

ing be mandated without safeguards of its own administrative hearing, mandated to defer funds.

Mr. DRINAN. Will the gentleman yield? This involves the *Boston* case. The plaintiffs did not ask for that relief because the Government said that it would dispute them on relief.

They wanted to prove that there was discrimination. I don't think you can generalize that the failure to request deferral did not indicate a wish or an intent to do so or the possibility that the judge would order it.

The case involved the State civil service commission. I don't think you can generalize from this instance.

Mr. KLEE. Could you comment?

Mr. FLEMING. I am not personally familiar with the *Boston* case. If you would like to have me comment further on the *Boston* case—if you would like that, I will be glad to do so for the record.

Mr. KLEE. If the court does not impose the relief and if a plaintiff does not request it, why should the Office of Revenue Sharing be mandated to do it without the procedural safeguards in an administrative context?

Mr. FLEMING. Well—

Mr. KLEE. If you would like to submit it for the record, fine.

Mr. FLEMING [continuing]. The "if" parts of that question are parts I would like to take a look at before responding to the latter part of your question.

Mr. BADILLO. When you answer that question, the basic point is, at what point can there be a finding which ends the review process? In other words, is that it, or then do we go to another hearing? That is the real issue.

Mr. FLEMING. I agree with the Congressman. In other words, when we have a finding of fact that there is discrimination, then where do we go from there as far as our procedures are concerned? That is really—again, I go back to the fact that that is the basic issue that the Commission is addressing itself to.

Mr. KLEE. I have one other question. Should the Office of Revenue Sharing have the discretion to take into account the costs and benefits involved in determining whether to defer funds? The example I am thinking of is where we have one isolated incidence of discrimination and where the damage from deferring funds can be immense.

I posed a hypothetical yesterday of an employment suit brought against a sanitation department in New York City for discriminatory employment, and the consequences of that under the proposed legislation is that all funds to New York City in the revenue sharing program would be deferred.

Do you feel that discretion at some point should be placed in the judge to enable him to say that the deferral—

Mr. FLEMING. You pose the question and say there is one case of discrimination. I assume that you feel that that is not accompanied by a pattern of discrimination.

Mr. KLEE. Well, even if there is a pattern, should someone balance the cost and harms involved? Should the impact on a city be taken into account in deciding whether to terminate funds?

Mr. FLEMMING. In my judgment, that discretion should not be there because I think such discretion could be used for the purpose of undermining the constitutional rights of the individuals involved.

I recognize that you have raised a very basic issue as far as sanctions are concerned. It is involved in title VI, as it is in other laws. It is included in the Older Americans Act.

The question is whether or not Government should step in and deny certain benefits to persons because of the failure of officeholders to live up to constitutional provisions. Some suggest that the penalty ought to be applied to the officials involved.

As far as the Civil Rights Commission is concerned, it has consistently supported the kind of sanctions that are in title VI. That is really the kind of sanctions we are talking about at the present time.

I recognize the validity of the argument that this may result in innocent parties being hurt as a result of the application of such a sanction. My judgment is that if the parties involved came to the place where they concluded that the Federal Government really meant business and that it was going to hold up funds or withdraw funds until the situation had been corrected, not very many people would suffer as a result of that because the various officeholders would get into line and would realize that the Government really meant business.

Mr. KLEE. That is the chance that is taken.

Mr. Chairman, my time has expired. I have no further questions.

Mr. EDWARDS. Are there further questions of these witnesses?

Mr. DRINAN. Mr. Chairman, may I suggest that counsel is posing a false dilemma? To go back to the *Boston* case, if those charged with discrimination had followed the District Court and had given the relief requested, they could have appealed. They might have been vindicated and nothing would have been lost. The white firefighters would have been reinstated to their positions if that was necessary.

I think he is posing a false dilemma: that either the city comes to a screeching halt or we enforce the law.

Mr. FLEMMING. That applies to the whole title VI philosophy and I certainly agree with you that they can go ahead and comply and then if they feel that they are the victims of an unfair decision, appeal.

Mr. DRINAN. In the Commission's opinion, has the Department of Justice adequately fulfilled its responsibilities under the nondiscrimination clause of the Revenue Sharing Act?

Mr. FLEMMING. We do not believe that it has.

Mr. DRINAN. Has the Commission made any assessment of the Department's coordination efforts with ORS pursuant to Executive Order No. 11764?

Mr. FLEMMING. I will supply the answer to that question for the record.

Mr. DRINAN. Thank you very much.

I yield back to the Chairman.

Mr. EDWARDS. Yes.

Gentlemen, I do not really think the problem of fungibility has been documented for this committee. I do know that it is a real problem, but perhaps for the record, some specific examples of where this has taken place to the detriment of the program could be supplied.

That would be appreciated.

Mr. FLEMING. The Comptroller General's report addresses itself to some extent to that.

Mr. EDWARDS. In too general a way to support such a drastic remedy as is suggested in your No. 1 recommendation and by the Comptroller General. That is a most stringent remedy and rather difficult to enact in a legislative body.

Mr. FLEMING. As I understand it, Mr. Chairman, you would like to have us supply any additional in-depth evidence pointing to the difficulties that have been encountered?

Mr. EDWARDS. Yes; evidence that involves the doctoring of books and it involves perhaps dishonesty in the municipalities, a form of deception, anyway. We have not had hard evidence to the effect that this is taking place.

In most of the jurisdictions that members of this subcommittee know about, revenue sharing money is allocated publicly and every nickel of it is pointed out by local government as going to a particular place.

Mr. BUTLER. Mr. Chairman?

Mr. EDWARDS. Yes.

Mr. BUTLER. When you supply that information, would you supply me a copy?

Mr. FLEMING. We will be happy to. Do you want any additional information on the constitutional issue or legal problem that is involved in this also?

Mr. EDWARDS. I have no problem with that.

Mr. FLEMING. So what you are asking us is, if we have, or if we have access to, specific cases where this issue has really complicated the enforcement of the act? We can all think of hypothetical situations.

Mr. EDWARDS. Perhaps the General Accounting Office, Dr. Flemming, has some examples. Otherwise, they would not have made that recommendation.

Mr. FLEMING. We will be happy to go to the General Accounting Office. We would be very happy to probe the matter still further from the standpoint of the use of our own resources.

Mr. EDWARDS. I am not suggesting a major project but it would be helpful if we could find one or two examples of where this has taken place.

Mr. Kindness?

Mr. KINDNESS. One other thing concerns me, Mr. Flemming. Let me preface my question by saying that theoretically, based on the philosophy that has been expressed here, a court might reach the conclusion that a local governmental unit could be forced to take revenue sharing moneys even though it initially refused them and then enforce the statutory provisions with respect to nondiscrimination.

I am wondering—my question is in the opinion of the commission, can the rejection of revenue sharing funds be considered as a discriminatory act in itself so as to then give rise to that decision of a court that discrimination warrants the requirement that they accept general revenue sharing funds?

Mr. FLEMING. I would not think that that would or should automatically follow. I can think of many reasons why jurisdictions with

which I am familiar would reject revenue sharing funds. They might reject them, for example, as a matter of principle.

Mr. KINDNESS. Let's say there was a finding by a court, or administratively there was a finding, that discrimination or a desire to continue a form of discrimination was the motivating factor of the local government.

Under those circumstances, would it be the opinion of the commission that revenue sharing funds could be enforced on the local government?

Mr. FLEMMING. I don't see anything in the law that could force revenue sharing funds on a State or a local jurisdiction. If a State or local jurisdiction says as a matter of policy we are not going to accept revenue sharing funds, I don't see any power in the Federal Government that would permit the Federal Government to say you have got to take them.

Mr. KINDNESS. Simply—

Mr. FLEMMING. The law certainly is not worded that way at the present time as I recall it. Although I have not looked at the list, I suspect there are some situations where jurisdictions have in effect said we are not going to take the funds.

That is something we can look into. That is a question of fact. I don't know whether that has come up in the hearings or not. Again I can't conceive of any way under which the Federal Government could force a State or a local jurisdiction to take Federal money.

Mr. KINDNESS. Thank you.

Mr. EDWARDS. Mr. Badillo?

Mr. BADILLO. I just want to make sure that we understand the chairman's question because the problem of fungibility as you know is that certain funds get so involved with others that they cannot be distinguished. That is where the term comes from.

The difficulty is in working on a budget. You can know that revenue sharing funds are coming and might well allocate them to a particular activity where it can document that there is no discrimination and steer it away from those activities where there is.

Therefore, you can't really prove a case. The only case you can prove is that the locality, even though when it comes to general revenue sharing funds, it is discriminating in certain areas, and it really could have taken the funds and put them in that place as well as in another one.

Once you put the money into the general budget account of a municipality, it is undistinguishable. You can't say that the \$200 received yesterday which are included in the \$100,000 payroll today, went to just that department where there is no discrimination.

Once it goes into the bank account, it is undistinguishable from any other moneys. Therefore, it would be a difficult case to prove affirmatively because the very definition of fungibility is that once it goes into the same—once the water goes into the river, it flows along with all the other water.

Mr. FLEMMING. I feel you have identified the issue very clearly, and of course, it was this concern that led the Commission to make the recommendation that it made. But as I understand it, the chairman is asking us if we have any evidence that would point to the conclusion that in jurisdictions A, B, or C, this had actually happened.

I think the suggestion that it is not going to be easy to identify evidence of that kind of action is a sound one. I still recognize the importance of trying to see if we have such evidence.

Mr. EDWARDS. Since the subject has come up again, I certainly understand what Mr. Badillo refers to. He is a CPA and would know what fungibility is much better than I. The mere term infers that there is something going on at the local government that is not aboveboard.

Mr. BADILLO. Not necessarily, Mr. Chairman. It is not necessarily illegal.

Mr. EDWARDS. I didn't say illegal. I said not aboveboard. Certainly it is devious, and there are implications of deviousness—that local governments are taking money and using the funds for certain purposes, and are not stopping their discrimination, continuing their discrimination and still using the revenue funds; taking funds from here and putting them here.

It is clear to all of us what it consists of. The CPA would not have a great deal of difficulty in auditing a municipality and say you have obviously done this.

Mr. BADILLO. We can show there is discrimination. We can also show that it would be a remarkable coincidence if in all these cases, the general revenue sharing funds did not go into areas of discrimination.

If we can show that there exists discrimination, we can by implication conclude that this was steered away from the dangerous area. But it is not something you can easily document.

It will have to be based on the circumstance that there exists discrimination.

Mr. EDWARDS. We will hold the record open. We would like to move on. We thank you, gentlemen, for your splendid testimony here today. You have been very helpful.

Our second witness this morning is Mr. Robert Dempsey, Chief of the Federal Programs Section of the Department of Justice. Under the terms of section 122 of the Revenue Sharing Act, the Department of Justice is also to play a significant role in the enforcement of the act's antibias provisions.

We hope to hear from Mr. Dempsey regarding the Department's effort in fulfilling that responsibility.

Mr. Dempsey, we thank you for coming, and we look forward to receiving your testimony. You may proceed as you so desire.

TESTIMONY OF ROBERT N. DEMPSEY, CHIEF OF THE FEDERAL PROGRAMS SECTION, DEPARTMENT OF JUSTICE, CIVIL RIGHTS DIVISION

Mr. DEMPSEY. Thank you very much, Mr. Chairman and members of the committee. It is a personal privilege and a pleasure for me to appear before this subcommittee today. It is the first opportunity I have ever had to testify before a congressional body, and indeed, it is only the second time I have been in a committee hearing room.

Mr. Pottinger has asked me to express his regret at not being able to appear here today before the committee to give his personal testimony, but he was unexpectedly called out of town on a matter of business, and he asked me to substitute for him.

Mr. Pottinger's statement is quite brief and self-explanatory, and simply explains the Attorney General's statutory responsibility under

the General Revenue Sharing Act to the subcommittee. With the permission of the chairman and members of the committee, I ask that Mr. Pottinger's written statement be made a part of the record and in addition ask that the Department's written response to the chairman's series of questions sent to the Attorney on September 10 be made a part of the record because I think they assist in supplementing Mr. Pottinger's statement.

Mr. EDWARDS. Without objection, the questions and answers and the testimony will be included in the record.

[The documents referred to follow:]

STATEMENT OF STANLEY POTTINGER, ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS, DEPARTMENT OF JUSTICE

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today to discuss the federal implementation of section 122 of the State and Local Fiscal Assistance Act, popularly known as the General Revenue Sharing Act.

As you know, section 122 prohibits discrimination on the basis of race, color, national origin or sex in any program funded with revenue sharing monies. Since revenue sharing funds are dispersed periodically to approximately 39,000 state and local governments, the revenue sharing nondiscrimination provision has a uniquely broad sweep; properly implemented, it can contribute significantly to the elimination of discrimination in our nation.

It is particularly appropriate to consider the civil rights aspects of the General Revenue Sharing Act at this time because the President has submitted a Bill to the House and Senate (H.R. 6558; S. 1625) to renew the Act for an additional five and three quarters years.

The Justice Department has an important statutory role under the Act. Section 122 vests the Attorney General with authority concurrent to that of the Secretary to enforce the statutory prohibition against discrimination. The function of the Attorney General, however, is not defined by statute alone. Executive Order 11764 also impacts on the relationship between the Justice and Treasury Departments in enforcing Section 122. The Order authorizes the Attorney General to coordinate the federal implementation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*). Title VI prohibits discrimination in all federally assisted programs (e.g., categorical grant programs) other than revenue sharing. In my view the revenue sharing program is covered by the Executive Order since the purpose of the Order is to ensure the consistent and effective implementation of civil rights law by federal agencies.

For these reasons, I welcome the opportunity to discuss with you the Justice Department's enforcement of Section 122 and the salient legal and policy issues presented by the current Act and the administration's proposed renewal legislation as they relate to civil rights enforcement.

Mr. Chairman, I would be happy to respond to any questions you and the members of the subcommittee may have.

DEPARTMENT OF JUSTICE,
Washington, D.C., September 30, 1975.

Hon. DON EDWARDS,

Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Attached is the Department's response to the questions set forth in your letter to the Attorney General of September 25 relative to the Department's enforcement program of the civil rights provisions of the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1242, *et seq.*

If there is any further information the Subcommittee would like from the Department, please advise.

Sincerely,

MICHAEL M. UHLMANN.

Question 1: How many cases alleging discrimination has the Office of Revenue Sharing referred to your office pursuant to Section 122?

Three cases: *United States v. City of Chicago (Police)*, C.A. No. 73C-2080 (N.D. Ill.); *United States v. School District of the City of Ferndale, Michigan*, *et al.*, C.A. No. 75-70958 (E.D. Michigan); and Montclair, New Jersey.

(a) Please describe each such case.

United States v. City of Chicago (Police), C.A. No. 73C-2080 (N.D. Ill.)

A suit was brought against the Chicago Police Department on August 14, 1973 alleging discrimination in its employment practices with regard to testing, hiring, promotions and assignment which were based on race, sex, and national origin. A revenue sharing allegation was added in August 1974. Trial was completed in June 1975 and the Court has it under consideration.

United States v. School District of the City of Ferndale, Michigan, et al., C.A. No. 75-70958 (E.D. Michigan)

The complaint in the above case concerns alleged racial segregation of the elementary schools in the City of Ferndale, Michigan. Count Two of the Complaint is the part concerning revenue sharing funds. It was based upon a referral to this Department from the Director of the Office of Revenue Sharing. Count Two alleges that the State of Michigan has used a substantial portion of its revenue sharing funds to support the State's public school employees' retirement system, in which Ferndale school system employees participate. The complaint asserts that this use of revenue sharing funds involves the State's Retirement System in the support of a racially discriminatory program in violation of Section 122(a) of the Revenue Sharing Act and requests appropriate relief including the possible return of moneys used to support the alleged racially discriminatory program in Ferndale.

Montclair, New Jersey

The Director of the Office of Revenue Sharing referred this matter to the Civil Rights Division so that an appropriate civil action could be instituted to enjoin expenditure of revenue sharing funds pending administrative enforcement proceedings by the Office of Revenue Sharing. Non-compliance by Montclair was based upon an order by the New Jersey Division on Civil Rights that the City discontinue the case of certain unvalidated police and fire employment examinations and adopt certain hiring ratios.

The Office of Revenue Sharing gave the Mayor of Montclair 60 days to come into compliance. However before the 60 day period would be up, a check of approximately \$50,000 would be sent to Montclair. The Office of Revenue Sharing wanted the Department of Justice to enjoin the use of that amount of the \$50,000 obligated for use in the Police and Fire Departments.

(b) *What action did the Justice Department take in each case?*

1. *United States v. City of Chicago*: In this case, in response to the referral from the Office of Revenue Sharing, the complaint was amended to include a revenue sharing count.

2. *United States v. School District of Ferndale*: The Department brought suit against the school district.

3. *Montclair, New Jersey*: The Civil Rights Division investigated the facts of the Montclair case and found that the City was in compliance with the New Jersey order. Thus, it did not appear that we could sustain an injunction against the city. Accordingly, we referred the matter back to the Office of Revenue Sharing to monitor Montclair to insure that they remained in compliance with the New Jersey order.

(c) *What is the current status of each case?*

1. *United States v. City of Chicago*: The case is before the court for decision.

2. *United States v. Ferndale School District*: The case is in the discovery stage.

3. *Montclair, New Jersey*: Referred back to ORS for monitoring and further proceedings as necessary.

Question 2: How many civil actions has the Justice Department brought where violations of the antidiscrimination provisions of the Revenue Sharing Act have been alleged? Please list the cases.

There have been eight civil actions prosecuted by the Civil Rights Division in which violations of the antidiscrimination provisions of the Revenue Sharing Act have been alleged, viz: *United States v. Jefferson County Alabama, et al.*, C.A. No. 75-P-06665 (N.D. Ala.); *United States v. City of Socorro, New Mexico*, C.A. No. 74-624 (D.N.M.); *United States v. School District of the City of Ferndale, Michigan, et al.*, C.A. No. 75-70958 (E.D. Mich.); *United States v. City of Tallahassee, Florida*, TLA No. 74-209 (N.D. Fla.); *United States v. City of Milwaukee, Wisconsin*, C.A. L.A. No. 74-C-480 (E.D. Wis.); *United States v. City of Memphis, Tennessee*, C.A. No. C-74-288 (W.D. Tenn.); *United States v. City of Buffalo,*

New York, C.A. No. 1973-414 (Police Department); *United States v. City of Buffalo*, New York, C.A. No. 1974-195 (W.D.N.Y.) (Fire Department); and *United States v. City of Chicago (Police)*, C.A. No. 73C-2080 (N.D. Ill.).

(a) How much of these cases were ongoing litigation where the complaints were subsequently amended to reflect revenue sharing allegations? Please list any such cases.

Two cases were ongoing and amended to include revenue sharing allegations: *United States v. City of Chicago (Police)*, C.A. No. 73C-2080 (N.D. Ill.); and *United States v. City of Buffalo, New York*, C.A. No. 1973-414 (Police Department).

(b) How many of these cases were filed as a result of a referral to the Department by the Office of Revenue Sharing? Please list the cases.

None. However, in *United States v. City of Chicago (Police)*, C.A. No. 73C-2080 (N.D. Ill.) and *United States v. School District of the City of Ferndale, Michigan, et al.*, C.A. No. 75-70958 (E.D. Mich.) the Office of Revenue Sharing made statutory referrals to the Department subsequent to the commencement of local proceedings by the Department.

(c) How many of these cases were "pattern and practice" cases? Please list the cases.

All of the cases listed in the answer to question 2 are "pattern and practice" cases, except *United States v. City of Socorro, New Mexico*, C.A. No. 74-624 (D.N.M.).

(d) How many of these cases were filed on the basis of information obtained during a Justice Department compliance review? Please list the cases.

One case was filed as the result of a compliance review—*United States v. City of Tallahassee, Florida*, C.A. No. TCA-74-209 (N.D. Fla.).

Question 3: Has consideration been given to including in your revenue sharing related lawsuits a request that the court order temporary escrow of further revenue sharing payments to the violating government, such as in cases where a temporary restraining order on further hiring is imposed in employment cases to prevent further harm through biased practices until the case is resolved? If this has not been considered, do you see any legal and practical merit to this approach?

This procedure has not been followed in cases brought by the Attorney General alleging violations of the civil rights provisions of the General Revenue Sharing Act. Ordinarily, an interlocutory decree against a government for apparent violation of section 122(a) would enjoin the *prima facie* discriminatory acts pending a trial on the merits thereby making the withholding of funds unnecessary. Under circumstances where the expenditure of revenue sharing funds during the pendency of the action would make adequate relief impossible to achieve (e.g., discriminatory site selection for construction) a preliminary injunction which might issue could suspend the project thereby suspending the use of revenue sharing monies for the project.

Question 4: Does the Department have a regular compliance review procedure for carrying out its enforcement responsibilities under the Act?

Yes.

(a) Describe any such compliance review procedures.

The Federal Programs Section of the Civil Rights Division conducts periodic routine reviews of revenue sharing recipients. Sites for review are selected based upon analysis of objective criteria (e.g., population statistics, public employment profiles, residential segregation, allocation of revenue sharing funds) together with input from Division and Community Relations Service personnel familiar with conditions in geographic locales, the U.S. Attorney's Office and, more recently, public interest organizations.

Once a site for a routine review has been selected, a letter is sent from the Section to the chief executive officer of the municipality advising of our intention to conduct the review, the proposed timetable for the review, and the statutory authority of the Attorney General under the General Revenue Sharing Act. We also suggest that the chief executive might wish to appoint a liaison to facilitate the review and minimize disruption of normal business routine; and we ask that a line item budget be available for review showing the specific areas in which revenue sharing monies have been obligated or allocated. On-site inter-

views are conducted with relevant municipal officials and employees and minority interest groups and leaders. Relevant documents are also requested for analysis and on-site inspection of physical facilities is customary. Where apparent violations of section 122(a) emerge, letters may be sent to municipalities to correct the violations in situations where the violations are minor. Where violations are major, a memorandum is forwarded to the Assistant Attorney General recommending legal action. Referral to the Office of Revenue Sharing of apparent violations is also an available option.

(b) *How many compliance reviews have been conducted by the Justice Department? Where? How many and which of those reviews were conducted by the Office of Revenue Sharing and Justice?*

The Federal Programs Section has undertaken forty-four civil rights compliance reviews of Revenue Sharing recipients. Twenty-six of these reviews were conducted under the Attorney General's independent authority, and eighteen were initiated at the request of the Office of Revenue Sharing:

LIST OF RECIPIENTS REVIEWED UNDER INDEPENDENT AUTHORITY

- | | |
|-------------------------|----------------------------|
| 1. Charleston, S.C. | 14. Lexington, Ky. |
| 2. Chattanooga, Tenn. | 15. Laredo, Tex. |
| 3. Chesapeake, Va. | 16. McAllen, Tex. |
| 4. Columbus, Ohio. | 17. Monroe, La. |
| 5. Corpus Christi, Tex. | 18. Omaha, Nebr. |
| 6. Folkston, Ga. | 19. Pasadena, Calif. |
| 7. Fresno, Calif. | 20. Pompano Beach, Fla. |
| 8. Ft. Lauderdale, Fla. | 21. Portsmouth, Va. |
| 9. Greenville, S.C. | 22. Racine, Wis. |
| 10. Harlingen, Tex. | 23. San Bernardino, Calif. |
| 11. Lackawanna, N.Y. | 24. Stamford, Conn. |
| 12. La Feria, Tex. | 25. Tallahassee, Fla. |
| 13. Las Cruces, N. Mex. | 26. Winston-Salem, N.C. |

JOINT REVIEWS WITH ORS

- | | |
|---------------------------|-----------------------------------|
| 27. Baker, La. | 36. Kansas City, Mo. |
| 28. Baton Rouge, La. | 37. Long Beach, Calif. |
| 29. Calhoun County, Tex. | 38. Los Angeles County, Calif. |
| 30. Cleveland, Ohio | 39. McMullen County, Tex. |
| 31. Commerce, Calif. | 40. Morgan City, La. |
| 32. Downey, Calif. | 41. New Orleans, La. |
| 33. Glendale, Calif. | 42. Riverside County, Calif. |
| 34. Jefferson Parish, La. | 43. San Bernardino County, Calif. |
| 35. Jim Hogg County, Tex. | 44. Ventura County, Calif. |

c. *Does the Department have a procedure for the making of staff recommendations by attorneys or staff members who have conducted such reviews?*

Yes.

d. *If so, how many recommendations have been made that actions be filed against a recipient jurisdiction? Please describe each such recommendation, the jurisdiction involved, and the final Department action in each case.*

Two recommendations have been made that suit be filed against recipients. The first recommendation resulted in *United States v. The City of Tallahassee, Florida*, TCA 74-209 filed December 13, 1974.

The second recommendation is pending within the Department. It would be inappropriate to disclose the identity of the recipient involved prior to suit.

e. *What action has been taken on recommendations made by Justice to ORS for those reviews which were conducted jointly by the two agencies?*

The status of the eighteen reviews conducted by the Civil Rights Division for the Office of Revenue Sharing is that fifteen of the eighteen are under review by the Office of Revenue Sharing. Three, Kansas City, Missouri, New Orleans, Louisiana and Cleveland, Ohio are still in the analysis stage in the Civil Rights Division.

COMPLAINTS ALLEGING DISCRIMINATION UNDER THE REVENUE SHARING ACT

Origin of complaint	Nature of complaint	Department action	Current status
1. Alemece County, N.C.	Discrimination in use of revenue-sharing funds.	Request for more specific information from complainant.	Under investigation.
2. Bay St. Louis, Miss.	do	Referred to ORS.	As of Sept. 22, 1975 in analysis.
3. Beverly Hills, Calif.	Discrimination in organization of revenue sharing funded senior citizens' center.	do	As of Aug. 31, 1975, 30-latter seat.
4. Bowling Green, Ky.	Discrimination in city employment in jail facilities.	Referred to ORS/under investigation by public accommodation and facilities.	Under investigation by ORS and Department of Justice.
5. Charleston, S.C.	Discrimination in city employment.	Became part of general compliance review of city.	Under review.
6. Colquitt County, Ga.	Discrimination in use of revenue-sharing funds.	Under investigation.	Under investigation.
7. Contra Costa County, Calif.	Complaint that blacks underrepresented on jury panels/discrimination in location of proposed jail.	Referred to ORS.	As of Aug. 31, 1975, review completed.
8. Coral Gables, Fla.	Women not included in decisions regarding allocation of revenue-sharing funds.	Under investigation.	Under investigation.
9. Crittenden County, Ark.	Denial of minority participation in decision-making regarding revenue-sharing programs.	Referred to ORS, LEAA, Department of Labor and HUD.	As of Aug. 31, 1975, in analysis by ORS.
10. Dade County, Fla.	Discrimination by county school board in letting contracts.	Referred to ORS.	As of Aug. 31, 1975, review scheduled.
11. Denver, Colo.	Discrimination in use of revenue sharing by fire department.	do	do
12. Folkston, Ga.	Discrimination in provision of sewer and water services.	Became part of general compliance review.	Under investigation.
13. Gibsland, La.	Misuse of revenue-sharing funds in purchase of firetruck.	Referred to ORS.	Closed.
14. Jacksonville, Fla.	Discrimination in use of revenue-sharing funds in recreation services.	do	Under investigation.
15. Do.	Discrimination in use of revenue-sharing funds.	do	ORS investigation.
16. Lake County, Ind.	Discrimination in city council's refusal to allocate revenue-sharing funds for coroner's morgue and administrative facilities.	do	As of Aug. 31, 1975, letter of noncompliance.
17. Lake County, Ohio.	Discrimination in use of revenue-sharing funds.	do	As of Aug. 31, 1975, review completed.
18. Mammoth Springs, Ark.	do	do	As of Sept. 22, 1975, under investigation.
19. New Orleans, La.	Discrimination in letting contracts for Super Dome.	Advised complainant that Department found no revenue funds allocated in construction of Super Dome.	Closed.
20. Osceola, Ark.	Discrimination in programs funded through revenue sharing.	Referred to ORS.	As of Aug. 31, 1975, in analysis.
21. Pachuta, Miss.	Tennis and basketball courts built with revenue-sharing funds closed in evening when blacks used them.	None.	Tennis and basketball courts reopened.
22. Pompano Beach, Fla.	Discrimination in use of revenue-sharing funds.	Became part of general compliance review.	Under investigation.
23. Portland, Maine.	Complainant dismissed from his job with private employer.	Letter to complainant advising Department has no authority to investigate.	Closed.
24. Portland, Ore.	Discrimination in operations of public parks.	Referred to ORS and Department of Interior.	Under investigation.
25. Racine and Kenosha, Wis.	Discrimination in employment by police and fire departments.	General compliance review conducted.	Under review/awaiting city's implementation of affirmative action plan.
26. Rolling Fork, Miss.	City's refusal to permit blacks access to municipal records.	Referred to ORS.	City now allows access—Closed.
27. San Carlos Apache Reservation, Ariz.	Misuse of revenue-sharing funds.	do	Under investigation.
28. Sandersville, Ga.	Alligation sewers not provided to black citizens.	Under investigation.	Do.
29. San Jose, Calif.	Discrimination in city employment and in use of revenue-sharing and LEAA funds.	Referred to ORS and LEAA.	LEAA investigating.
30. St. Petersburg, Fla.	Misuse of revenue-sharing funds.	Request to complainant for specific information for response.	Under review.
31. Stuttgart, Ark.	Discrimination in use of revenue-sharing funds.	Referred to ORS.	As of Sept. 22, 1975, under investigation.

Question 6: How many staff members does the Department have who work exclusively on civil rights enforcement under revenue sharing? How many staff members engage in such activity on a part-time basis?

The Civil Rights Division has no personnel exclusively assigned to or engaged in civil rights enforcement of the General Revenue Sharing Act. Within the Federal Programs Section of the Division seven in-service attorneys and two research analysts have participated in work related to revenue sharing compliance reviews.

Question 7: Within the Federal Programs Section, does the Department have a Revenue Sharing section or unit? If not, has the Department ever had such a revenue sharing unit?

No. The Section has not had a formally constituted "revenue sharing unit" established by the Division, although an informal unit was operational at one time with a senior line attorney acting in a supervisory capacity.

Question 8: Is there any arrangement for regular or periodic meetings between the Department and the Office of Revenue Sharing on civil rights enforcement under the Act? If not, has the Department ever attempted to bring about such an arrangement?

There are no regular meetings between Justice and ORS personnel although individual meetings and conferences are held on a periodic basis as the need arises.

Question 9: Does the Department consider the Office of Revenue Sharing to be a Title VI agency within the terms of Executive Order 11764?

Technically, no; practically, yes. The Order expressly applies only to federal agencies administering programs of assistance covered by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. While we recognize that Treasury does not consider the Office of Revenue Sharing to be a Title VI agency as such, we believe that it is clearly within the spirit of Executive Order 11764 to have ORS be subject to its provisions. The underlying purpose of the Order was to vest in the Attorney General central authority for coordinating the implementation of federal civil rights responsibilities attached to federal financial assistance. In large part section 122 of the General Revenue Sharing Act simply tracks the language of Title VI; the remedial provisions of Title VI are incorporated by reference in section 122 (b) of the Act; general revenue sharing funds may be utilized in programs and activities under categorical grant programs covered expressly by Title VI; the Attorney General exercises concurrent authority with the Secretary in enforcing section 122 (a). All of the foregoing factors suggest the propriety of construing the Order to cover the operations of the Office of Revenue Sharing. It is our understanding that Treasury shares this view.

Question 10: What types of civil rights enforcement assistance and oversight, involving the Office of Revenue Sharing, has the Justice Department achieved under Executive Order 11764?

The Department has been responsive to the requests of ORS for assistance in conducting certain compliance reviews. The Department has also provided assistance to ORS with respect to the proposed rulemaking and renewal legislation. However, no review of the ORS civil rights enforcement program has been undertaken by the Department under Executive Order 11764.

Question 11: Are there any draft Title VI regulation which the Department is considering for issuance pursuant to Executive Order 11764? If so, please include in your response a copy of such draft regulations.

Although the Division has under consideration a comprehensive set of Attorney General draft regulations under the Executive Order, it would be inappropriate to provide a copy of the regulations to the Subcommittee prior to Departmental clearance. Generally, the regulations cover the following items: Title VI guidelines, public dissemination of Title VI information, data collection, procedures to determine compliance, complaint procedures, employment practices covered by Title VI, equal opportunity plans, compliance responsibilities of state agencies in operating continuing programs, methods of resolving noncompliance, coordination among federal agencies and the Department, interagency cooperation and delegations of Title VI responsibilities, and federal agency staffing requirements. If approved, the regulations will be published in the Federal Register as proposed rulemaking.

Question 12: What types of civil rights coordination efforts have taken place between the Department and the Office of Revenue Sharing?

See answers to questions 4 (b) and 10.

a. Please provide a copy of the proposed coordination agreement between Justice and the Office of Revenue Sharing. Why has this proposed agreement been pending and unsigned for more than 18 months?

A copy of the Memorandum of Understanding between the Civil Rights Division and the Office of Revenue Sharing is attached. Initially, the Compliance Division within ORS expressed the desire to establish a functional relationship with Justice on an *ad hoc* basis before executing a formal memorandum. Subsequently, most of the procedural components of the Memorandum became operational thereby, in our view, eliminating any urgency with respect to a formally executed document.

b. Have the two agencies agreed upon what constitutes compliance so that there is a uniform standard for compliance for recipient jurisdictions?

No. Determinations of compliance depend upon the facts of each case. Uniform standards should, of course, be applied by Treasury and Justice in remedying identifiable discrimination.

c. Have the two agencies agreed upon standards which will lead to the Office of Revenue Sharing's referral of a case to the Justice Department?

No. The special facts of each case will determine whether a matter should be handled through the administrative or judicial route. The Memorandum of Understanding specifies notification of proposed law suits or administrative hearings thus laying the basis for consultation, if appropriate.

Question 13: Because of the high degree of fungibility of revenue sharing dollars and the ease with which recipient jurisdictions can allocate such dollars to nondiscriminating activities and use "freed-up" funds for discriminating activities, Elmer Staats, the Comptroller General of the United States, has suggested that all activities of a recipient, not just "funded" activities, be subject to review for purposes of compliance with laws against discrimination. What is the Justice Department's opinion regarding this proposal?

We do not favor the proposal of the Comptroller General on policy and practical grounds.

Mr. Staats' proposal would clothe the federal government—for the first time—with authority to enforce the constitutional requirement of nondiscrimination in all the activities of governmental units receiving revenue sharing funds by way of administrative fund cutoff and civil injunctive proceedings by the Attorney General. This extraordinary extension of the federal jurisdiction over the operations of state and local governments is based on the reasonable contention that revenue sharing monies are fungible. Yet the same argument may be made with respect to federal grants-in-aid to state and local governments despite the legal restrictions placed on the use of such grants. The infusion of federal money into state and local governments under any federal assistance program may serve to free local funds for other uses. Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, however, Congress determined that, at least with respect to invoking administrative sanctions for noncompliance, a federal agency's jurisdiction was limited to the program or part thereof in which the noncompliance was found (42 U.S.C. 2000d-1). Section 122(b) authorizes the Secretary to exercise the powers and functions of Title VI in dealing with unyielding noncompliance and his jurisdiction is, accordingly, limited to the program or part thereof in which the noncompliance is found. We see no compelling reason under the revenue sharing legislation to abandon the limitations established under Title VI for exercising federal jurisdiction. The available evidence indicates that recipient governments do not place revenue sharing funds in "safe" programs (*i.e.*, those without civil rights dimensions) and funnel only local monies into municipal programs more susceptible to civil rights problems.

Secondly, with respect to employment discrimination, Congress has determined in the Equal Employment Opportunity Amendments of 1972 to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* that the focal point for federal enforcement of Title VII with respect to nonfederal public agencies shall be vested in the Equal Employment Opportunity Commission and the Department of Justice. It may be open to question whether the federal enforcement effort with respect to eliminating employment discrimination in public agencies is well served by diffusing responsibility through the expanded coverage contemplated by Mr. Staats with the possible attendant problems of overlap and inconsistent implementation. Possible overlap would often include services since local services are frequently recipients of grant-in-aid programs (*e.g.*, health, welfare) and thus fall within the primary responsibility of federal agencies enforcing

Title VI. Finally, such an expanded role for the federal government would be difficult and, perhaps, impossible to enforce due to inadequate staff levels.

In the event Congress believes it appropriate to clothe an agency of the federal government with general powers to enforce the Fourteenth Amendment, it may be appropriate to consider such legislation in a separate bill.

Question 14: On March 30, 1973, Assistant Attorney General J. Stanley Pottinger wrote to Mr. Graham W. Wutt, then Director of the Office of Revenue Sharing, suggesting that the regulations of the Office of Revenue Sharing should contain a provision permitting deferral of payments pending a hearing, such as that exercised by agencies under Title VI. In the Federal Register of July 24, 1975 (Vol. 40, No. 143, p. 30977) the Office of Revenue Sharing has issued a Notice of Proposed Rule Making providing for the immediate withholding of payments, under certain circumstances, once a Federal court has found a violation of Section 122. In view of the fact that the Justice Department has suggested deferral pending a hearing, what are the Department's views on the regulations (51.59 (c)) proposed by the Office of Revenue Sharing?

In response to the notice of the Treasury Department's initial proposed rule making under the General Revenue Sharing Act, we sent a letter to Mr. Watt on March 30, 1973 suggesting, among other things, the following: A provision in Section 51.32(f) (1) allowing the Secretary to initiate enforcement proceedings in case of threatened noncompliance, as well as past or present noncompliance, may be helpful. Such a provision is standard in Title VI regulations. A provision permitting deferral of payments pending a hearing such as that exercised by agencies under Title VI, may be appropriate. Such a deferral need not constitute a forfeiture, and may be made subject to the type of limitations imposed on the Commissioner of Education under Title VI, 42 U.S.C. 2000d-5.

While we suggested in our letter that Treasury consider the application of deferral authority to Section 122(b), the extent to which deferral can be appropriately used under the Act is not clear. The Office of Revenue Sharing has acknowledged its authority to exercise deferral authority under certain circumstances. On June 6, 1975 the Office of Revenue Sharing issued Technical Memorandum No. 75-4 to state and local governments receiving revenue sharing funds (copy attached). The Memorandum was issued pursuant to section 51.10(b) of the general revenue sharing regulations (requiring the submission of satisfactory assurances of program and civil rights compliance) specifying that in the absence of receiving a satisfactory assurance from a recipient (against which there is an unresolved violation determination) that revenue sharing monies will be used in conformity with the Act, the recipient will not receive its entitlement for the forthcoming entitlement period (one year) until a satisfactory assurance is submitted.

Deferral, however, is not authorized by the Memorandum with respect to payments made during an entitlement period. This limitation appears correct since the deferral authority under Title VI is ordinarily appropriate only with respect to new programs or activities rather than to continuing assistance programs where the funds are due and payable.¹ It may be argued that revenue sharing is a continuing program of assistance which makes deferral inappropriate once an entitlement period begins. That is the position of the Secretary of the Treasury. Whatever position one takes regarding whether or to what extent the Secretary has authority to defer revenue sharing funding, it is clear that the exercise of such authority is within the administrative discretion of the Secretary.

Treasury's proposed regulation 51.59(c) provides the Secretary with discretionary authority to withhold the payment of entitlement funds to a recipient—pending the entry of affirmative action order by a federal court—where the recipient has been adjudicated to have violated the nondiscrimination provision of the General Revenue Sharing Act. In such a context "withholding" is in the nature of a sanction and, accordingly, different in concept and purpose than "deferral." The proposed regulation has some judicial support. In *Robinson v. Shultz*, C.A. No. 74-248 (D.C.D.C. Order of December 18, 1974) the court ordered the Treasury defendants to withhold all further payments to the City of Chicago

¹ "In some instances . . . It is legally permissible temporarily to defer action on an application for assistance, pending initiation and completion of section 602 procedures—including attempts to secure voluntary compliance with Title VI. Normally, this course of action is appropriate only with respect to applications for noncontinuing assistance or initial applications for programs of continuing assistance. It is not available where Federal financial assistance is due and payable pursuant to a previously approved application." *Attorney General Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964*, 28 CFR 50.3.

until the City was made subject to a final court order in *United States v. City of Chicago*, C.A. No. 73 C 2080 (N.D. Ill.) and Treasury determined that the City defendants had effectively implemented the terms of the order. The court in *City of Chicago* had, on November 7, 1974, held that certain employment practices of the Chicago Police Department were *prima facie* racially and sexually discriminatory and preliminarily enjoined the City from continuing such practices. *Robinson v. Shultz* was transferred to the Northern District for Illinois on January 16, 1975 and was consolidated with *City of Chicago v. Robinson v. Simon*, C.A. No. 75 C 79 (N.D. Ill.). On April 21, 1975 the court in *Robinson* denied the City's motion to modify the District of Columbia court's order of December 18 on the basis that the City had not remedied the discrimination found to be present by the court in its findings of November 7, 1974.

Question 15: In light of the extensive and well-documented nature of sex discrimination in the employment practices of many state and local agencies which are major revenue sharing recipients, how many of your employment cases have included sex bias allegations? Have there been any cases based primarily on sex bias allegations? Why have sex bias allegations received a secondary treatment in the past, and will more attention be given to this area in the future?

Seventeen employment cases have included sex bias allegations. Five of those cases were based exclusively on sex discrimination. The Civil Rights Division is presently engaged in a review of its sex discrimination enforcement program with a view toward determining whether it should be expanded.

MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE OF REVENUE SHARING, DEPARTMENT OF THE TREASURY AND CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE REGARDING COORDINATION IN THE ENFORCEMENT OF THE NONDISCRIMINATION PROVISION OF SECTION 122 OF THE STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972

The Office of Revenue Sharing (ORS), Department of the Treasury, and the Civil Rights Division (CRD), Department of Justice, agree to the following coordination procedures in order to avoid inconsistency and duplication of effort, in implementing their concurrent responsibilities under Section 122 of the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1242.

1. CITIZEN COMPLAINTS AND COMPLAINT INVESTIGATIONS

ORS and CRD agree to exchange complaints which allege violations of the Act on a timely basis. The basic purpose of the exchange is informational and ordinarily responsibility for acting on the complaint shall lie with the recipient. Where ORS or CRD is already acting on the substance of the complaint (e.g., field investigation or contact with subject public agency)—either through receipt of a prior complaint or as the result of a routine investigation or otherwise—that Department shall continue to exercise jurisdiction over the matter, but will periodically advise the other Department of developments. Under such circumstances, ORS and CRD will consult as to the proper disposition of the matter once the investigation is completed.

Where a complaint is sent to both ORS and CRD, the matter of jurisdiction will be decided by them on the basis of factors including availability of resources, presentation of unique legal and factual issues (including patterns and practices of discrimination), and allegations of specific types of discrimination.

2. ROUTINE COMPLIANCE REVIEWS

ORS and CRD agree to notify each other of scheduled civil rights compliance reviews conducted under their respective statutory authority pursuant to the Act; such exchange of information shall be extended to full investigations conducted by the CRD under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. (as amended by the Equal Employment Opportunity Act of 1972 [Pub. L. 92-261]). Where ORS or CRD has already scheduled a public agency for review the other Department will refrain from independent action (except for routine financial audits by ORS as part of its programmatic compliance reviews).

Where an ORS investigation indicates a possible pattern or practice of employment discrimination or presents unique legal issues, ORS will notify the CRD.

It is understood by the parties to this agreement that agencies found in compliance by ORS under Section 122 or by CRD under Title VII individually, shall be informed that such finding of compliance by the individual agency shall not preclude a review or investigation and a finding of cause under alternative statutes unless pursued in the manner indicated under other specific provisions of this agreement.

3. GENERAL

a. At the written request of CRD and subject to the availability of manpower, ORS will schedule for financial audit those public agencies designated by CRD for complaint investigation or compliance review where a detailed analysis of how revenue sharing funds are used is necessary. ORS will furnish copies of planned and actual use reports of recipients requested by the CRD. ORS and CRD will provide access to their respective files and records pertinent to their joint responsibilities under the Act. It is understood that these records and files are to be examined and will be kept confidential by each Department under the terms and conditions that apply to the employees of each agency.

b. Where an investigation conducted by CRD indicates civil rights violations prohibited by Section 122 of the Act as well as Title VII, such violation shall be set forth in notice letters to non-complying recipients and resolved by consent orders. A copy of such notice letters shall be forwarded to ORS.

c. Existing civil actions brought against public employers under Title VII shall be amended, where appropriate and in the discretion of the CRD, to include an allegation of a violation of Section 122(a) of the Act and its implementing regulations. ORS, if requested, may assist the CRD on a case by case basis in attempting to resolve these suits by consent decree.

d. Each Department shall inform the other of proposed judicial or administrative action under the Act. In instances where joint investigations were initiated prior to this agreement or where ORS and CRD pursue joint investigations under Section 122 and Title VII—Letters of Determination and Notice Letters if cause is found will be coordinated with the public being informed that: (i) efforts at resolution are the joint efforts of ORS and CRD; (ii) resolution will be in the form of a court order (consent or adjudicated) to eradicate both Section 122 and Title VII violations; and (iii) both agencies will have responsibility for monitoring compliance.

This Memorandum of Understanding shall continue in effect until the Departments determine that this Memorandum, or a section thereof, should be amended or terminated.

JOHN K. PARKER,
*Acting Director,
Office of Revenue Sharing,
Department of the Treasury.*
J. STANLEY POTTINOER,
*Assistant Attorney General,
Civil Rights Division,
Department of Justice.*

Mr. DEMPSEY. I wonder if I may be permitted a few extemporaneous remarks primarily based on my presence yesterday at the testimony of Under Secretary Schmults.

With the permission of the chairman and the members of the committee, I would like to avert to the message of President Nixon on February 4, 1971, which accompanied the administration's revenue sharing bill presented to both Houses. The President said in part in that message:

In my state of the Union message, I emphasized that these revenue sharing proposals would include the safeguards against discrimination that accompany all other Federal funds allocated to the States.

The legislation I am recommending, provides these safeguards.

Then he sets forth the specific provision of section 122(a). He follows by saying:

The Secretary of the Treasury would be empowered to enforce this provision. If he found a violation and was unable to gain voluntary compliance, he could then call on the Attorney General to seek appropriate relief in the Federal courts or he could institute administrative proceedings under title VI of the Civil Rights Act of 1964 leading to a cutoff of Federal funds.

The Federal Government has a well-defined moral and constitutional obligation to insure fairness for every citizen whenever Federal tax dollars are spent. Under this legislation, the Federal Government would continue to meet that responsibility.

Well, it is 4 years from that date, and we are meeting here today to consider whether the executive branch of the Federal Government has in fact met that moral and constitutional responsibility. The committee has before it a number of very intelligent and informed documents assessing the Federal implementation of the General Revenue Sharing Act civil rights provisions.

I refer most specifically to the report of the Civil Rights Commission, the report of the National Science Foundation, the Comptroller General's report, and several others. They all come to the basic conclusion that the Federal implementation of the civil rights provisions of general revenue sharing is deficient in many important respect.

Yesterday, Under Secretary Schmults acknowledged certain deficiencies with respect to the operations of the Department of the Treasury with respect to implementing its statutory obligations.

It seems to me this was the only sensible course to take. But I think we should go beyond simply acknowledging what the existing facts are and ascertain why they are as they are and what we ought to do in order to remedy the current problems with respect to implementing these responsibilities.

I would like to advert very briefly to what Chairman Flemming said in his testimony before the subcommittee. He said it is not sufficient for a Federal agency to be complaint oriented. That is not the best way to implement civil rights responsibilities. An agency must have an ongoing compliance program which includes self-generated routine compliance reviews so that it can intelligently and adequately monitor title VI compliance with the Federal assistance programs it monitors.

I think that is correct. But what are we talking about? What are these critical reports focusing on? They are focusing on an agency that has at present five civil rights compliance officers attempting to enforce a multibillion-dollar program having approximately 38,000 recipients.

Secretary Schmults said Treasury is about to add five additional people, and they will use some auditors, perhaps with training, to assist in the title VI implementation effort. Now, it seems to me unrealistic to expect the Department of the Treasury to undertake routine compliance reviews of any of its recipients, plus undertaking appropriate investigation of the variety of complaints it receives with the kind of staffing it now has.

I am fully cognizant of the interest in maintaining appropriate limits to Federal agency budget, but at the same time it seems to me—and I could not agree with Chairman Flemming more—that civil rights must have the highest priority with respect to assessing where Federal monies should be expended.

I would not say that all of the problems we are faced with today relate specifically to understaffing. That is perhaps too easy to say. Federal agencies often make that complaint. But I do think there is a certain logic to the conclusion that 10 people cannot do the job.

Ten people and perhaps twenty people cannot. It seems to me we have to look at the program and say what can Treasury do with what staffing it has and assess it on that basis. I would like to further mention that the Department of Justice fully supports the Department of Treasury's view with respect to its deferral authority and with respect to the views it takes as to withholding Federal funds in the context of ongoing litigation.

I think these are some of the most important issues that we can discuss today. I hope we will get into these very serious policy issues, the relationship of title VI with section 122 and the differences between these statutes, and the reasons for different remedies in revenue sharing and title VI.

With that, I apologize for this lengthy statement, but I hope we will be able to get into these areas, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Dempsey.

Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman and Mr. Dempsey. I took notes of the statement we don't have. Are you speaking for the administration when you say that civil rights have to take top priority? Are you speaking for Mr. Pottinger or Mr. Levy? Can we quote you as being binding on them.

Mr. DEMPSEY. I am speaking for myself.

Mr. DRINAN. You are not speaking for the Department of Justice? They sent someone who can't speak for the Department of Justice?

Mr. DEMPSEY. We have to face the facts—

Mr. DRINAN. We have a lot of things to do. I have three other hearings that I should be at.

Mr. BUTLER. Maybe if you let the gentleman answer the question we can move on.

Mr. DRINAN. We want to know what the Department of Justice is going to do about title VI and the nondiscrimination section. Have you talked with Mr. Pottinger or others? Is this binding on them? Can we use this as testimony?

Mr. DEMPSEY. Look, Congressman Drinan, Mr. Schmults said yesterday that they were under severe staffing constraints and that the recommendations for increments with respect to their civil rights provisions were not granted by the Congress.

I am not in a position to say that the requests of the executive—of the Department of Treasury were insufficient. Of course not. What I am saying is that those requests have not been granted in full.

Secondarily, I am saying that we have to analyze what the Department of the Treasury is doing with the staffing, the human resources it has. That is all I am saying. We should look at programmatic deficiencies in that context. This is also true with respect to the Department of Justice.

Mr. DRINAN. How many people at the Department of Justice work full time on enforcing civil rights in revenue sharing?

Mr. DEMPSEY. We have no one working full time.

Mr. DRINAN. No one full time at all?

Mr. DEMPSEY. No one working full time.

Mr. DRINAN. How many people did you have originally?

Mr. DEMPSEY. We never had anyone working full time. However, a major part of our responsibility goes into revenue sharing. I should also say that the Employment Section of the Civil Rights Division has brought a number of cases in which revenue sharing counts have been included in these cases.

The Education Section would also be involved in the revenue sharing effort where revenue sharing moneys are expended in educational programs. This would be true of any other section within the Civil Rights Division; so while the principal focus for conducting compliance reviews pursuant to the Attorney General's independent authority under section 122 is assigned at the present time within the Federal program section, other sections of the Civil Rights Division have those responsibilities as they come up in their ongoing litigation responsibilities.

Mr. DRINAN. The Justice Department has other obligations, too. Under Executive Order 11764, the Justice Department has been assigned the top coordination and leadership role. What, if anything, have you done pursuant to that mandate with regard to revenue sharing?

Mr. DEMPSEY. Congressman Drinan, Assistant Attorney General Pottinger, and Graham Watt, the former Director of the Office of Revenue Sharing, had some discussion some time ago with respect to the application of the Executive order to the revenue sharing program.

Mr. DRINAN. Has anything else happened?

Mr. DEMPSEY. If I may, I would like to finish. The Office of Revenue Sharing took the view that the Executive order did not cover the revenue sharing program because revenue sharing was not a title VI program and the Executive order spoke specifically only to coordination with respect to title VI of the 1964 Civil Rights Act.

More recently—as our answer to one of the questions the committee has asked indicates—more recently, the Department of Treasury has taken the view that the Executive order does in fact cover the general revenue sharing program. We have written to the Department of the Treasury and have said that given that situation we want to exercise an oversight responsibility with respect to how the Department of Treasury is conducting its civil rights program.

So, in response, we should say that the Department of Justice has not hitherto exercised an oversight responsibility with respect to revenue sharing although we have collaborated very closely with the ORS in providing guidance, assisting in renewal legislation, loaning ORS Civil Rights Division personnel for the performance of compliance reviews, and the like.

Now that it is clear what the Executive order covers, we will be exercising those oversight responsibilities.

Mr. DRINAN. Who will be exercising them if no one works full time on them?

Who is in charge?

Mr. DEMPSEY. Let me put it this way. We have conducted 44 compliance reviews pursuant to the Attorney General's authority. Obviously, a substantial amount of time within our section is devoted to enforcing the Attorney General's role. I cannot tell you that every

attorney or certain attorneys will be working full time on revenue sharing—we have other litigation responsibilities and coordinating responsibilities under the Executive order.

Mr. DRINAN. Mr. Chairman, my time has expired. I hope that there will be an opportunity for another round.

Mr. EDWARDS. Yes; there will be.

The committee will recess for 10 minutes for a vote on the floor.

[Voting recess.]

Mr. EDWARDS. The subcommittee will come to order. I recognize Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman. I would appreciate very much if you would tell us about the Boston case. Tell us where it is and why—first, do you know anything about the Boston case?

Mr. DEMPSEY. That case is being handled by the Employment Section of the Civil Rights Division. There is a revenue sharing count as I understand it, in that action. I think the matter—there has been a decision at the district court level and at the appellate court level and I think certiorari has been denied by the Supreme Court.

At no level in that litigation have stay orders been entered holding up remedying the discrimination. I cannot speak to the specifics of that case.

Mr. BUTLER. I thank you very much. I hope if anybody else asks you about it, you will plead ignorance.

I have no serious quarrels with your testimony. I do think I want to clarify in my own mind the line that Mr. Drinan was taking with reference to the extent to which you are speaking for the Department.

I guess your answer to that is that you had not cleared your testimony one way or the other with the Department because you did not consider it was necessary.

Mr. DEMPSEY. I am appearing here at the specific request of this committee. Mr. Pottinger was also to appear on behalf of the Attorney General. I have talked with Mr. Pottinger with respect to the testimony I am to give here today in answer to some of the questions that the committee had and that we responded to in written form and any other questions the committee may ask.

In my own mind, and I am sure this is Mr. Pottinger's view, that anything I say here today, unless I qualify it otherwise, would represent the position of the Department of Justice.

Mr. BUTLER. That satisfies me. Basically the view I got from you was it is a little bit unfair to be critical of the Office of Revenue Sharing if they have only got an extra five people with this large a responsibility.

Mr. DEMPSEY. Absolutely.

Mr. BUTLER. If they are falling short of what some people consider its responsibility, it is an appropriations and staffing problem and not principally a problem of legislation.

Mr. DEMPSEY. That is correct.

Mr. EDWARDS. You have indicated in response to the subcommittee's questions that the Justice Department has received 31 complaints alleging discrimination under the Revenue Sharing Act.

Some of the cases the Justice Department is still investigating. Others have been referred to ORS. On what basis does the Justice Department determine whether a complaint should be investigated by itself or by ORS?

Mr. DEMPSEY. Congressman, we have undertaken to refer complaints on the following bases: One, when the complaint we receive has concurrently been received by the Office of Revenue Sharing. Two, where the complaint raises not only civil rights allegations—allegations of civil rights violations but also alleges programmatic violations.

Three, under certain circumstances we have referred complaints to the Office of Revenue Sharing because of budgetary constraints which would have impeded us from implementing appropriate investigation of such complaints.

Four, our principal focus thus far has not been complaint investigation but rather to undertake a systematic evaluation of revenue sharing programs based upon certain objective criteria which we use to select certain sites for routine compliance reviews.

Mr. EDWARDS. I believe you said earlier that you have no full time professional personnel assigned to revenue sharing enforcement; is that correct?

Mr. DEMPSEY. That is correct.

Mr. EDWARDS. How much has the level of employees working full time on revenue sharing decreased over the past year? What did you have a year ago or 2 years ago in this area?

Mr. DEMPSEY. To the best of my recollection, I think over a year ago we may have had a total strength of about 20 attorneys. At the present time we have 9 or 10 attorneys in the section.

We were over strength at that time and we now have an authorized strength of 15 attorneys. In addition, however, we have a coordination staff whose principal responsibility—they are not attorneys but they are professionals—is to act as liaison with title VI offices in the various grant agencies.

Now that the authority for oversight of the revenue sharing program has been clarified through agreement between Treasury and the Justice Department, it would seem to me an appropriate function of our coordinators would be to institute such oversight functions rather than our attorneys who are principally litigation oriented.

Mr. EDWARDS. Does your section plan to seek more personnel?

Mr. DEMPSEY. Now that we are under strength, we have been interviewing attorneys from time to time and I feel we will come up to our authorized strength at the appropriate time.

Mr. EDWARDS. Has the Justice Department made any efforts to advise the public of its rights under the antibias provisions of the Revenue Sharing Act and of the Department's enforcement responsibilities?

Mr. DEMPSEY. Well, we do, of course—we have participated in and have attended a few conventions. We have provided a publication that publishes revenue sharing news with information with respect to the Department of Justice's program in implementing the Attorney General's independent responsibilities.

We have more recently been contacting public interest groups, the Lawyers Committee, the Southern Regional Conference and so on, to expand upon and build upon our contacts with other people so that people do know the Attorney General is implementing his responsibility.

I think, however, of course more could be done but at the same time it has not been a principal responsibility of the Attorney General to

publicize his role under any of the other titles of the 1964 Civil Rights Act and/or other civil rights legislation.

I think there is nothing wrong with it and we try to do what we can.

Mr. EDWARDS. Except that there has generally been a rather dedicated enforcement effort made in various areas covered by the 1964 act.

Mr. DEMPSEY. Well, I think that is so but I think if the implication is that there is not a similar dedication with respect to the General Revenue Sharing Act, it would be an incorrect implication.

Much of the work that we have done thus far indicates that what problems exist, at least in the areas we have looked into, exist in the area of employment discrimination. We already have an employment section whose principal responsibility—sole responsibility—is to undertake enforcement of title VII of the 1964 Civil Rights Act.

There is no reason for us to duplicate the responsibilities of other sections of the Civil Rights Division for example, to simply go around to various sites and uncover the same sort of problem that our employment section would uncover.

The principal focus of our efforts has been to attempt to see whether there is discrimination in the provision of municipal services in areas which are not otherwise covered by Federal civil rights law and not otherwise handled by other sections of the division.

Thus far we have found minimal evidence to indicate that there is service discrimination. Now this is not to say, however, that it does not exist. It may be because our site selection criteria are at fault.

We currently review whether such criteria are adequate to give us sufficient exposure to various sites in which there may be services discrimination. I think the fact that you have not seen a great many suits in this area is not due to the fact that we have not been attempting to vigorously enforce this provision.

It seems to make no sense to me to duplicate the effort of the division in another area.

Mr. EDWARDS. Thank you.

Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

I wonder how you would react to the proposition or suggestion made by some people the whole civil rights enforcement responsibility under revenue sharing should be transferred to Justice?

Mr. DEMPSEY. The Department would not find that an appropriate transfer of responsibility. It seems to us that the statute makes it very clear that the principal responsibility under the present act lies with the agency that has responsibility to administer the totality of the act.

We view the Attorney General's function as merely supplemental to that of the Secretary of the Treasury.

There is no reason why the Treasury cannot mount a sufficient effort given additional resources, a reasonable effort to implement the Secretary's responsibility. I do not think it is a solution to simply say that based upon certain evidence that because a sufficient amount has not been done by one agency, the only solution is transfer it to another agency.

My own view and, I think, that of the Department would be that the best thing that can be done is for the Department of Justice and the Department of Treasury to collaborate closely to see to it that

both agencies implement this civil rights responsibility the best way they can, given their resources.

Mr. DRINAN. On another point that keeps coming up, the Office of Revenue Sharing seems to suggest that vigorous efforts by them are necessary because first local officials are receptive to compliance.

They suggest that more cannot be done as it would be inconsistent with the unique nature of the revenue-sharing program. Would you give the views of the Department on that?

Mr. DEMPSEY. Well, with respect to the latter question on the uniqueness of the program, it is a unique program because it was to be and is now a thrust of the so-called new federalism program of expending Federal moneys with minimum strings attached.

I don't think President Nixon believed and I certainly don't think the Department of Justice or for that matter the Department of Treasury believes that that relieves the executive branch of any responsibility to firmly and efficiently enforce the civil rights responsibilities which are a part of that act.

Mr. DRINAN. Except that for some years, there was that ambiguity that now has been clarified. That Justice does have the same supervisory role over revenue sharing as over the other programs.

Mr. DEMPSEY. But we are dealing with two different questions. The first question is how has Justice—or how have Justice and Treasury implemented their independent responsibilities? The second question is what has Justice done to implement its coordination responsibility over Treasury?

With respect to the first, it seems to me that the Congress appropriately is considering how effective Justice and Treasury are in implementing this responsibility. I don't think that Undersecretary Schmults' testimony yesterday indicated that there was any lessening of a responsibility with respect to civil rights oversight and investigative complaints reviews because of the unique nature of the program.

I think my views and the views of the Department of Justice are consistent with his views on that. As far as the ambiguity about the coordination responsibility, there was not any ambiguity. There was basic disagreement. It was a judgment that I made at the time—of course, I am subject to criticism for it, perhaps—is that if we did not have a coordination responsibility, under the executive order we could, nonetheless, be responsive to the Department of Treasury in the manner we have been. We have been there to assist them as they saw fit to use us. But in terms of weighing in with yet one more report on evaluating how the Department of the Treasury was implementing its responsibility, that seemed to me to be a duplication of effort since it already has been done by other Federal agencies and private authors.

Our best effort, I felt, could be made in implementing the Attorney General's independent responsibility. Now it seems to me that since the reports are in, that Treasury itself is reevaluating its position and evaluating the quality and quantity of its enforcement at this stage.

The Department of Justice has a significant role to play and it is one we intend to play. On October 8, Mr. Pottinger wrote to Mr. Schmults indicating his pleasure that Treasury now was in accord with the Department of Justice's view with respect to our oversight

responsibility. Accordingly, Mr. Pottinger requested that we collaborate closely in effecting changes as they may be required and expressed his own concern that it would be important for both Departments to maintain consistent standards of implementation so that the Federal Government would speak with one voice in terms of implementing compliance responsibilities.

Mr. DRINAN. On that question of the consistent standards of compliance, it is my understanding that for some 18 months the Department has been preparing appropriate investigatory standards under title VI. Is there any date when they might be available?

Mr. DEMPSEY. Congressman Drinan, these proposed standards have been under review for some time and Mr. Pottinger is going to submit them to the Attorney General in a few weeks. I wonder if I might explain the delay with respect to implementing those standards. They are very complete and they assume a role for the Attorney General not only with respect to revenue sharing but also with respect to title VI.

The basic question these standards address is whether the Attorney General has a directorial responsibility under the Executive order or something less, something one would call a coordination responsibility. Chairman Flemming said he thought that the Executive order gave the Attorney General the greater authority and that it was his view that it was essential for the Federal Government to have one focal point in which direction for title VI enforcement could be vested or lie.

Without question, I can say that the Department of Justice agrees with that view. The point is where should that central direction logically lie? This is a long way around responding to your question, but we are not only considering the proposed standards, but what they imply which is a considerable amount.

That is one of the reasons we have taken a great deal of time to deliberate. But I think we will have a conclusion with respect to those deliberations in a very short time.

Mr. DRINAN. Thank you very much. My time has expired.

Mr. EDWARDS. Mr. Badillo.

Mr. BADILLO. You testified that the Justice Department has an employment section and an education section. Why hasn't the Justice Department set up a revenue sharing section, in view of the fact that there are 39,000 jurisdictions and many billions of dollars involved?

Mr. DEMPSEY. That is an entirely appropriate question and at the risk of repeating something I said I believe during your absence, Congressman, what we have found in the course of our routine compliance reviews is that the problems which appear to exist in the main appear to be employment problems.

Of course this is common knowledge that there is substantial employment discrimination for a variety of reasons. But we have an employment section and we do not want to duplicate the efforts of that section. The division has certain priority standards by which we seek to maximize—

Mr. BADILLO. How many compliance reviews have you made? Isn't it something like 30?

Mr. DEMPSEY. We made 44.

Mr. BADILLO. I don't think that that is a valid sample on which to base such a fundamental decision.

Mr. DEMPSEY. What we are trying to do, as I say, our focus principally is the determination whether there is services discrimination with respect to the operations of municipal recipients.

Thus far the evidence would indicate that there is not any as to—or very little—as to those jurisdictions we have looked at. This may be a problem not of whether services discrimination exists in municipal operation, but our selection criteria.

We are reevaluating those criteria and we are going to try to move into other areas to determine what level of discrimination exists. It seems to me at that point, if there is significant discrimination disclosed through our reviews, then we ought to augment our resources.

Mr. BADILLO. The point is that your sample of 44 out of 39,000 is a very small sample.

Mr. DEMPSEY. The compliance reviews were based on a much larger sample. We evaluate the residential segregation of an area, the employment profile, the history of discrimination in the area, and information we gather from other sections in the division.

Mr. BADILLO. Are you evaluating in New York City?

Mr. DEMPSEY. No, we have not.

Mr. BADILLO. Then is a great deal of revenue-sharing money spent in that city alone. That city should certainly be included in any Justice review. You have made the decision that you do not need a revenue sharing section based on your 44 compliance reviews. That is a very small sample on which to make such a judgment. It is okay to blame Treasury and say they only have five civil rights investigators. However, I really do not think that the Justice Department has made an evaluation of what its own needs are and of what its staff requirements should be in order to gear up for this very serious enforcement responsibility.

Mr. DEMPSEY. Well, I would not want to leave you with the impression that we have made a judgment on this matter.

Mr. BADILLO. Are you still reviewing?

Mr. DEMPSEY. We are still reviewing. We want to evaluate the selection criteria we have been using.

Mr. BADILLO. When you reach a final conclusion, would you report that conclusion to the subcommittee so that we can then decide whether you are staffing up adequately in order to comply with the requirements of the law?

Pending that, in view of the fact that you have no full time attorneys working in this area, would you support an amendment to the law enabling private individuals to bring their own actions under the civil rights provisions of the Revenue Sharing Act?

As you know, that was one of the recommendations of the Commission on Civil Rights and it is also a provision included in Father Drinan's bill.

Mr. DEMPSEY. Well, under title VI of the 1964 Civil Rights Act, the right of private action has been acknowledged by the courts.

I see under those circumstances no reason why private individuals could not bring actions under section 122.

Mr. BADILLO. If you agree then that private individuals should have that right, wouldn't it be appropriate to simply make sure by amending the Revenue Sharing Act? In that way, there would be no question.

Mr. EDWARDS. If the gentleman will yield, I think that we should also consider adding the provision that attorney fees will be available.

Mr. BADILLO. Exactly, yes. Would you support Mr. Dempsey?

Mr. DEMPSEY. With respect to that particular question, I have not discussed that with Mr. Pottinger but it certainly—I see no reason why private individuals should not be accorded that right under general revenue sharing which the courts have traditionally recognized under title VI.

Mr. BADILLO. Would you get us an answer specifically as to whether or not the Department will support that?

Mr. DEMPSEY. Yes.

[Subsequent to the hearing the following letter was received for the record:]

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., October 24, 1975.

Hon. DON EDWARDS,

Chairman, Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN EDWARDS: This is in response to your letter of October 17, 1975, requesting a response by today to questions posed during my testimony on October 9, 1975 before your Subcommittee.

The questions concern proposed amendments to the General Revenue Sharing Act which would (a) amend the Act to provide a private right of action against "any State government or unit of local government, or against any officer thereof * * *," and (b) provide, with respect to such suits, for the award, under certain circumstances, of "reasonable attorney fees as part of the costs."

As to explicitly providing a private right of action, we are unaware of the need for such a provision. There have been several private suits brought to date against governmental entities to enforce the provisions of the Act and, none, to our knowledge, has been dismissed for want of a jurisdictional provision. Accordingly, in the absence of a demonstrated need for such a provision, we would be opposed to such an amendment.

As to the attorneys' fees provision, you may be aware that Chairman Rodino, by letter of October 1, 1975, requested this Department's views on some eight bills, each of which involves amending one or more existing statutes to provide for an award of attorneys' fees in differing cases and circumstances. The Department is now preparing its response to Chairman Rodino's request, and any comments on this aspect of H.R. 8329 should await that response.

Sincerely,

J. STANLEY POTTINGER, *Assistant Attorney General, Civil Rights Division.*

By: ROBERT N. DEMPSEY, *Chief, Federal Programs Section.*

Mr. BADILLO. You say that you have reviewed the proposed regulations of ORS and that you cooperated with ORS in drafting them?

Mr. DEMPSEY. We have given them our views with respect to the regulations.

Mr. BADILLO. Do you agree with the specific regulations which allow the Treasury Department to make its own independent determination as to whether there was or was not discrimination, even after a final order of a Federal district court?

Mr. DEMPSEY. The position that the Department took in that with respect to that particular regulation was as follows: It is our view that the utilization of fund terminations in the context of ongoing litigation, particularly litigation brought by the Attorney General, is not necessary to vindicate the rights of individuals who may be victimized by the alleged discrimination. In response to one of the questions of the committee, we simply said that where the Attorney General is already bringing an action, that it would be appropriate to handle the entire matter within the context of the litigation.

We saw no concurrent responsibility on the part of the Secretary of the Treasury to institute—

Mr. BADILLO. I know my time has expired but that is not the question. If you happen to find, based on an action brought by an individual, that there is a violation of the law, isn't there a responsibility to insure that that violation ceases?

Mr. DEMPSEY. Of course. But under certain circumstances where the court has entered an interlocutory decree—

Mr. BADILLO. I am talking about a final order.

Mr. DEMPSEY. Once there is a final order with respect to a matter, there would be no reason to withhold Federal assistance at that time because the final order would enjoin the discrimination which is the subject matter—

Mr. BADILLO. The matter can be appealed for years. It could go all the way up to the U.S. Supreme Court. In the meantime the jurisdiction continues to receive funds even though there has been a final decision by the district court.

Mr. DEMPSEY. Well, it seems to me that while there may be appeals taken, there is another question and that is whether stays are entered with respect to the decree of the district court. It seems to me if the district court refuses to enter a stay with respect to its injunctive order, then the remedial provisions of that injunctive order are carried out during the appellate process.

There would be—under no circumstances would there be a reason for the Treasury to withhold funds. If a stay is not entered, it would indicate that the question is sufficiently close that the district court felt that the matter should be decided by the court of appeals.

Under those circumstances, it would seem to me appropriate for the Department of Treasury to stand back and see how the court of appeals would decide the issue.

Mr. EDWARDS. The time of the gentleman has expired. The gentleman will have another opportunity.

Mr. Kindness?

Mr. KINDNESS. I apologize for being out of the room part of the time. There are too many things happening this morning. I would like to go into now one particular area a little bit and that is the comparison that is made between title VI and the ORS actions in enforcement under the general revenue sharing program.

This comparison has been made rather constantly in these hearings. Would you care to indicate any way in which you would distinguish between the enforcement powers that exist under title VI as compared to revenue sharing programs?

Mr. DEMPSEY. Yes. Title VI is drawn more narrowly than section 122. Specifically title VI covers only discrimination on the basis of race, color, and national origin. Section 122 adds sex discrimination. By regulations, the Department of the Treasury has construed section 122 to cover employment discrimination. Section 604 of title VI excludes employment discrimination from coverage except under sections where the primary objective of the Federal assistance is to provide employment and, by regulation, where it can be said that employment discrimination has an adverse effect upon the beneficiaries.

It is at least a question whether—and I think a question for the

Congress in its renewal legislation—as to whether employment discrimination should be covered under section 122.

Treasury has concluded that it is covered. The Department of Justice agrees with this view, specifically we agree because, among other reasons, in 1972, Congress amended title VII under the Equal Employment Opportunity Act to cover public employment.

These are developments since the passage of title VI in 1964. Under these circumstances I think employment is appropriately covered.

It is a question that I think deserves some consideration because title VI now does not cover employment discrimination. That is another question. Should it?

I see no reason why title VI coverage and relief should be more limited than under the General Revenue Sharing Act. Now with respect to relief, getting away for a moment from coverage, Treasury has taken the position that under General Revenue Sharing, Treasury not only has the right to terminate or refuse to grant or continue assistance, but the statute gives Treasury authority to require (1) repayment of funds used in a discriminatory manner, and (2) to withhold all revenue sharing funds in future entitlement periods if the noncomplying recipient does not come into compliance.

Those are fairly weighty tools to use. Under title VI, termination or refusal to grant are the only sanctions authorized.

To my knowledge title VI, if I am correct and I think I am, title VI does not authorize repayment and it certainly does not authorize withholding more funds than in the program in which the discrimination was found to exist.

Mr. KINDNESS. So that in a very real sense section 122 of the Revenue Sharing Act is much broader already than title VI because it does include employment and because the deferral mechanism and other mechanisms are pretty weighty and are available under section 122?

Mr. DEMPSEY. That is right.

Mr. KINDNESS. I have no further questions, Mr. Chairman.

Mr. EDWARDS. Ms. McNair?

Ms. McNAIR. Thank you, Mr. Chairman.

On the issue of deferral, in responding to the subcommittee's questions, the Justice Department stated that it believed that the Treasury Department does have the authority to defer funds pending the outcome of administrative proceedings but that "It is clear that the exercise of such authority is within the administrative discretion of the Secretary."

Based on the Department's extensive coordination experience with other title VI agencies, in its opinion, is there any reason why Treasury should not exercise that discretion in view of the fact that other title VI agencies have so exercised it?

Is there any distinguishing feature with respect to the Treasury Department or the revenue-sharing program that would justify Treasury's not exercising that discretion?

Mr. DEMPSEY. At the risk of boring you, I wonder if I might give you a fairly extended answer because that is a very central question.

It is a question that is at the heart of the *Robinson v. Schultz* case and one which you have discussed in previous testimony. I would like to start with title VI and then answer your question because it seems

to me that is the starting point, when we analyze what Treasury can and cannot do.

Ms. McNAIR. We are agreed on what it can do. I really want a departmental opinion with respect to the appropriateness of Treasury's refusal to exercise an authority which we agree that it has.

Mr. DEMPSEY. In the context of litigation where the Attorney General has brought a suit let's say under 122, in our view the Secretary has no further role to play with respect to implementing responsibilities under 122.

Ms. McNAIR. Let's take it out of the context of litigation for the moment.

Mr. KINDNESS. Would the lady yield for just a moment? Since this answer may be rather extensive, might I ask if you will cover this aspect of it while you are speaking? Is there any point at which the rights of the majority ought to be considered?

Mr. DEMPSEY. You mean the beneficiaries?

Mr. KINDNESS. Yes.

Mr. DEMPSEY. Absolutely. The Treasury Department has recognized that it does have deferral authority. I think sometimes there is a mixture of words here. I think they call it withholding. We use the term deferral in the context of maintaining the status quo.

It is not a sanction. It is not interim relief. It is ex parte action on the part of an administrative agency to hold the line until a formal administrative hearing can be held. It is particularly useful in a situation where you have noncontinuing assistance where an application has been made for such assistance.

If you have evidence that there is discrimination you defer action on the application until you can determine whether there is discrimination or not pursuant to a hearing and so on. But Treasury does not have that kind of a program.

It has what we would call a continuing assistance program. Now one can play around with whether it is or it is not a continuing assistance program and I have done that myself, but it is very clear that Treasury, in terms of the expectations of recipients to receive certain funds at certain times of the year throughout the period of the authorization of the statute—that certain actions are taken on the basis of these authorizations—these expectations and that are continuing Federal programs.

There are Attorney General guidelines for the implementation of title VI that spell out specifically that with respect to continuing assistance programs it is generally inappropriate to exercise a deferral function. And we think the logic of those guidelines is equally applicable to the revenue-sharing program.

One of the points made in the guidelines is that during the continuation of this assistance, the discrimination can be eradicated.

Ms. McNAIR. But Treasury itself does acknowledge that entitlement periods are in fact blocks of time which divide revenue-sharing payments. At the beginning of these periods, assurances must be provided and unless those assurances are given, then there is a withholding of the next entitlement payments under the State and Local Fiscal Assistance Act. That clearly indicates that this is not a "continuing program."

Mr. DEMPSEY. I used the term deferral because it is used in title VI and it makes it easier for me conceptually. You are absolutely correct. We think that really meets the concern or the interests that we had at the time the Assistant Attorney General wrote to Mr. Watt in March 1973, recommending the possibility of deferral.

Treasury in a recent technical memorandum published in June 1975, acknowledges the fact that where there is an initial determination made that there has been discrimination, where there is discrimination in a certain program which the recipient intends to use future entitlement payments, then those entitlement payments will not be made until satisfactory assurances are provided.

In our view that is a correct analysis of the Secretary's authority. In answer to your question, yes, they do have deferral authority and secondly, I think they have interpreted correctly the circumstances under which they can exercise that authority.

Should they exercise the authority? That depends upon the individual fact circumstances. Mr. Kindness has asked should the interests of the majority be considered. Let us say you have a situation as follows:

Let us assume in the city of Chicago we are not dealing with the police department. Let's deal with something more attractive in the sense of social import such as a \$50-million expenditure to set up drug and rehabilitation centers, mental health care clinics, programs of this kind.

Would we actually want to defer funding those programs on the basis of an allegation of employment discrimination in the operation of those programs?

Not employment discrimination, that has an impact upon the beneficiaries, but simply plain old employment discrimination. Under circumstances like that, the Secretary should have discretion as to whether he is going to exercise deferral or not.

We have to keep in mind deferral is not a sanction. It is simply an attempt to, where appropriate, maintain the status quo.

Mr. EDWARDS. Mr. Klee?

Mr. KLEE. Thank you, Mr. Chairman. I think the last point made is an important one. The general approach of the DOJ and the Treasury and the administration is where a civil rights violation is found, action should be taken to remedy that violation but not to punish the people in the jurisdiction.

Mr. DEMPSEY. That is right. You will find that throughout the legislative history of title VI. The floor leaders discussed the utilization of fund termination and the great sensitivity it held.

Mr. KLEE. I would like to probe the area of the definition of discrimination. The point has been made that regulations have not been promulgated so that State and local governments and citizens residing therein so that citizens can determine whether funds have been spent in a discriminatory manner.

Should the facts—the effect of those funds on various minority communities be taken into account? Assume we are looking at street repair and streets in the minority community are more in need of repair than in another part of town but funds are disbursed on an equal basis to the minority and the majority community.

Do you think that that action is discriminatory?

Mr. DEMPSEY. Well, let me answer it this way.

It could very well be discriminatory. The point of departure is to analyze whether there has been discrimination in providing paving to the minority community. If there has been discrimination, then the first obligation of the city is to remedy that discrimination.

That may well mean expending all of the revenue-sharing moneys or for that matter local moneys to remedy the street paving job.

Mr. KLEE. Let's assume we have a rare city that can prove there was no paving discrimination, that the problem was due to vandalism or whatever on the streets. Then is the equal amount of money being disbursed discriminatory?

Mr. DEMPSEY. Say we have street paving or gutters and sidewalks or whatever are funded through special assessments. Frequently the minority community is economically deprived. They can only obtain certain municipal services through the agreement to pay these special assessments and they don't have the money to do that.

Mr. KLEE. I don't mean to cut you off but my questions are limited. Let's take the case of rat control. If the city expends an equal amount of money to control rats and other pests in the majority and the minority community but it so happens that the need is greater in the minority community, is that expenditure discriminatory under the Revenue Sharing Act?

Should we focus on the action taken in expenditures or on the effect in the community? Does the statute mandate in your view?

Mr. DEMPSEY. Well, it seems to me that if municipal services have an effect of denying a certain portion of the populace equitable services of course there is discrimination under section 122.

Mr. KLEE. Well I suppose that states the administration position. I would like now to focus attention if I might on the so-called making up for past discrimination regulation that has been promulgated and the extent to which it seems to override the statute in certain cases.

The statute says that no person shall be excluded from any program or denied the benefits of any program where there are general revenue-sharing funds. A regulation implies that in cases to make up for past discrimination, the statute does not apply or that certain racial groups can be excluded or denied benefits.

Is it your view that where that regulation is applied in such a manner that it is an unlawful regulation?

Mr. DEMPSEY. Well, I don't know whether I would agree with you on the characterization of Treasury's proposal—proposed regulations—or the actual regulations. Perhaps if you will give me a moment.

Mr. KLEE. Let me give you an example. There is an Indian camp set up for Indian use and other racial groups were denied the opportunity to attend that camp. This seems to me to be clearly in violation of the statute which says that no person—including people that are not minorities—shall be excluded from or denied benefits of a program.

Yet the "making up for past discrimination" was deemed by counsel at ORS to supersede the statute. I was wondering what the Department's position was on that regulation in that particular context.

Mr. DEMPSEY. Frankly I would want to give that some consideration. Mr. Klee. That is a difficult problem. I want to respond to you by saying this:

The courts have long recognized that affirmative action which may mean taking race into consideration because of past discrimination is appropriate and may be required and has been sanctioned by the courts for years and years.

Mr. KLEE. Where it is benign, but not to deny the opportunity for somebody else to come in and on merit be participating in the program.

Mr. EDWARDS. The time of the gentleman has expired. All time has expired. We must recess now and we will resume at 1:30. We would like to keep you here longer, Mr. Dempsey, but we must move along. We appreciate your contribution very much.

Mr. DEMPSEY. Thank you very much, Mr. Chairman. I appreciate the opportunity of being here today.

Mr. EDWARDS. We stand in recess until 1:30.

[Whereupon, at 12:45 p.m., the subcommittee adjourned, to reconvene at 1:30 p.m.]

AFTER RECESS

[Whereupon, at 2:15 p.m., the subcommittee reconvened, the Honorable Don Edwards, chairman of the subcommittee, presiding.]

Mr. EDWARDS. The subcommittee will come to order.

I recognize the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Chairman, I move that the Subcommittee on Civil and Constitutional Rights permit coverage of this hearing, in whole or in part, by television broadcast, radio broadcast, and still photography, or by any of such methods of coverage pursuant to committee rule V.

Mr. EDWARDS. Without objection, the motion is agreed to.

This afternoon certainly promises to be a most enlightening and informative session in this our inquiry into the civil rights aspect of general revenue sharing. We have appearing before us a most distinguished panel of individuals who have intimate knowledge of civil rights enforcement in revenue sharing, at both the national and local level.

Appearing on our panel this afternoon are three individuals who represent groups which are sponsors of the national revenue sharing project—a project which has engaged in extensive monitoring of the program at the local level.

Those individuals are Ms. Alice Kinhead, representing the League of Women Voters, Ms. Sarah Anstin, representing the National Urban Coalition, and Mr. William L. Taylor, representing the Center for National Policy Review of the Catholic University Law School.

The other distinguished members of this afternoon's panel are Ms. Susan Perry, who is staff counsel for the Southern Regional Council in Atlanta. Accompanying Ms. Perry is Ms. Eddie Mae Steward, who is president of the local NAACP in Jacksonville, Fla.

Ms. Steward has had firsthand experience as a civil rights complainant before the Office of Revenue Sharing and I especially want to extend to her my personal gratitude for traveling such a long distance to tell us her story.

I thank you all for coming and ask that each of you now present a brief statement regarding your experiences and views in this area, after which we will open up the session for questions.

You may proceed.

TESTIMONY OF A PANEL CONSISTING OF WILLIAM L. TAYLOR, DIRECTOR, CENTER FOR NATIONAL POLICY REVIEW, SCHOOL OF LAW, CATHOLIC UNIVERSITY; SUSAN PERRY, STAFF COUNSEL, SOUTHERN GOVERNMENTAL MONITORING PROJECT, SOUTHERN REGIONAL COUNCIL, ATLANTA, GA.; EDDIE MAE STEWARD, PRESIDENT, NAACP, JACKSONVILLE, FLA.; SARAH SHORT AUSTIN, VICE PRESIDENT, NATIONAL URBAN COALITION; ALICE KINKEAD, DIRECTOR, HUMAN RESOURCES DEPARTMENT OF THE LEAGUE OF WOMEN VOTERS EDUCATION FUND

Mr. TAYLOR. Thank you.

Mr. Chairman and members of the subcommittee, my name is William L. Taylor, and I am director of the Center for National Policy Review, a legal research and advocacy group affiliated with the Catholic University Law School.

The center is one of four organizations which jointly sponsor the national revenue sharing project—an intensive effort to monitor the operation of general revenue sharing in communities throughout the Nation and to gauge the impact of the law on minorities and poor people.

Among the center's responsibilities are continuing oversight of the Federal Government's administration of revenue sharing, particularly the civil rights provisions of the law, and legal representation of those seeking administrative redress for violations of the law.

Recently we completed a substantial report for the National Science Foundation on civil rights under general revenue sharing. The subcommittee has been furnished copies of this report and certainly may reproduce any portions that it deems relevant and useful to complete the record of this hearing.

Mr. EDWARDS. We have copies of that report, Mr. Taylor, and it has been made, without objection, a part of the subcommittee file.

Mr. TAYLOR. Thank you. I do have a prepared statement which I will try to abbreviate.

As you know, civil rights organizations have been concerned for several years that the guarantee of equal protection of the laws will not be maintained under general revenue sharing or under other measures that have as their stated purpose, an increase in "local control" over social welfare programs.

Whatever one may think about "local control" as a theory, black people and other minorities have special reason to know that in practice they are the victims under any program that is locally controlled without effective Federal safeguards.

This concern does not mean that civil rights groups are in love with the detailed administrative regulations and plain old redtape that have marred some aspects of categorical programs. We have concern, as you do, about the speedy and efficient delivery of services to citizens.

But there is a basic distinction to be made between the myriad strings that have been attached to some Federal programs and requirements of civil rights. The right to be treated fairly and without discrimination based on race, sex, or other invidious considerations in programs

made possible by Government funds is not simply an administrative requirement or string.

It is a fundamental ground rule having to do with the integrity of the processes of government. Indeed, I believe that national guarantees of civil rights fall into the same category as "one man, one vote"—they are rules imposed from above on States and local governments, not for the purpose of making them weak or dependent but to assist them in becoming strong enough to be vital parts of a functional Federal system.

Certainly Congress in enacting the State and Local Fiscal Assistance Act of 1972 recognized that assuring equal treatment under law was a fundamental responsibility that must remain in the hands of the Federal Government even when the mechanisms for allocating Federal assistance were being altered substantially.

The requirement of nondiscrimination, as you know, was mandated in section 122 of the act and specific responsibilities to enforce the law and to correct violations were given to the Department of the Treasury and the Department of Justice.

The enactment of section 122 also constituted implicit recognition by Congress that, contrary to the views held by some people, the duties of the Federal Government are not satisfied simply by defining the right to equal treatment and providing a means for private redress in Federal courts.

Where the denial of rights has been pervasive, as it has in almost every governmental function affecting black citizens and members of other minority groups, private lawsuits can make only a small dent in remedying the problem.

What is required, and what is contemplated by title VI of the Civil Rights Act of 1964, section 122 and other provisions of law, is full use of the powers of Federal agencies assisted by Federal funds.

But any reassurance that civil rights groups may have derived from the inclusion of specific antidiscrimination provisions in the revenue-sharing law has been dissolved by actual experience with the way the law has been administered.

Three years have elapsed since enactment of the law, a sufficient period to make judgments about the manner in which it is being administered by the Department of Treasury and its Office of Revenue Sharing.

It has become clear to us from our own investigations and from studies conducted by others:

1. That there is pervasive discrimination in programs and activities assisted by revenue-sharing funds.

2. That the Office of Revenue Sharing, the agency chiefly responsible for securing compliance with the law, has failed to take effective steps to prevent or remedy discrimination.

I would like to touch briefly on two areas where problems of discrimination commonly arise under the revenue-sharing law—discrimination in the employment practices of State and local governments and discrimination in local services provided with Federal assistance.

It has been clear for many years that racial discrimination in State and local employment is a violation of the equal protection clause of the 14th amendment. But it was not until 1972 that Congress provided a remedy for such discrimination by amending title VII of the

Civil Rights Act of 1964 and by including section 122 in the State and Local Fiscal Assistance Act.

In light of this, we were not surprised to discover that in the great bulk of 33 jurisdictions examined by our project—mainly medium and large cities—there were wide gaps in the percent of minorities and women in the work force and the percent employed in particular departments and agencies of Government and often in the city as a whole.

In one large southern city, New Orleans, with a 50-percent minority population, the fire department which received revenue-sharing funds had fewer than 3 percent minorities. In a border city, Louisville, with a 24-percent minority population, the health department which received revenue-sharing funds employed only 7 percent minorities.

And there were several cities with departments which employed few minorities or women not only in professional or managerial positions, but even in blue collar and secretarial positions where minorities were employed elsewhere in the city. There is evidence, also, as others will testify, that similar disparities exist in employment in State agencies.

The basic finding of the GAO study reinforce those which we reached independently. These disparities reflected in the GAO report and our study are a reflection of various State and local practices that fail to conform to the requirements of Federal civil rights law—the use of tests for hiring and promotion that exclude minorities and that are not job related, the failure to adopt affirmative techniques for recruiting minorities and women, and the persistence of instances of overt discrimination.

Even if we assume that most States and local governments are willing to cooperate in bringing their employment practices into compliance with the law, a major effort by the Federal Government is clearly required.

And, with State and local government constituting the most rapidly expanding field of job opportunity in our national economy over recent years, it is also clear that such an effort by the Federal Government is crucial to the goal of minorities to overcome the barriers posed by past discrimination and to become full and productive participants in American society.

Similarly, the requirement that governmental services and facilities be furnished equally and without discrimination on the basis of race or other invidious considerations is an area where legal remedies have emerged only recently.

It was not until 1972 that a Federal court of appeals, in the case of *Hawkins v. Town of Shaw*, held that under the 14th amendment a remedy must be provided when services such as street lighting or paving are clearly inferior in black neighborhoods to those provided in white neighborhoods.

More than one-third of the complaints pending at the Office of Revenue Sharing concern disparities in services, and among them are several where the allegations are of blatant discrimination of the type found in *Shaw*.

In several of these cases including Amarillo, Tex.; Bogalusa, La. and Ouachita Parish, La., ORS has found substance to the allega-

tions, but the cases either remain pending or the agency has accepted the most general pledges that the discrimination will be remedied.

In the medium sized and larger cities of the South and North where our monitoring project was conducted, discrimination in services was not as blatant as that found in *Shaw* or in several other small southern communities, but people in minority and ghetto neighborhoods expressed strong feelings that they were not receiving equal services.

In these situations, adequate implementation of the civil rights provisions of the revenue-sharing law demands careful investigation to determine whether discrimination exists and the development of objective standards of measuring governmental services.

Yet few investigations have taken place and, although we have been told that the Office of Revenue Sharing is preparing a guidebook on municipal services, it has not yet issued or even developed objective standards by which the equity of services subsidized by revenue sharing can be gaged.

Thus as matters now stand, increasing Federal resources are being applied through revenue sharing and other Federal laws to assist local governmental services, while the inaction of the ORS permits these sums to be used in ways which violate the Constitution and laws and thwart the national goal of providing a suitable living environment for every American citizen.

One may sympathize with the problems facing an agency charged by law with preventing discrimination in some 39,000 State and local governments not only in the activities I have described but in other areas as well, such as in the employment practices of private contractors utilizing revenue-sharing funds for construction projects.

But the fact that the task is one of great magnitude provides no excuse for the inaction and lethargy that has marked ORS's performance in carrying out the duties placed upon the agency by Congress.

In the first place, the opportunity to create a climate encouraging compliance with the law has been lost by the public utterances of high officials of the Department of the Treasury. Repeatedly, they have described revenue sharing as a program free of strings, different in its administration in almost every respect from programs of categorical aid.

Civil rights requirements have occasionally been mentioned, but they have been treated as secondary matters, with no suggestion that the Treasury Department was prepared to make vigorous use of its enforcement authority to remedy violations.

With these signals emanating from the top, it is little wonder that few State and local governments have been impelled to examine their past practices and to take corrective action where needed.

Second, the Office of Revenue Sharing has studiously ignored the teaching of experience under earlier civil rights laws that the key to success in performing a major enforcement task is to establish good compliance machinery and to demonstrate a willingness to impose sanctions on those who violate the law.

During the 1960's, the Department of Health, Education, and Welfare was able to bring about successful integration of public schools in many districts in the South by making it clear that it would withhold funds from districts that did not submit acceptable plans.

Once HEW had employed this remedy in a number of cases, other districts began to come into compliance without awaiting the imposition of a sanction. Particularly important in this process was the decision of HEW to defer new funding to a district upon a finding of probable noncompliance even in advance of completion of all the steps of the complex administrative process leading to fund termination.

But ORS, as you know, refused to consider the use of deferral as a remedy on grounds that its program was "different" and it has persisted in this refusal even after having been told by a Federal district court that it had legal authority to defer funds subject to the adoption of appropriate regulations.

In fact, ORS has deferred revenue-sharing funds only once and then only when specifically ordered to do so by a Federal court because judicial findings had been made that the city of Chicago had practiced racial discrimination in its police department which received large sums of revenue-sharing money.

Belatedly last spring ORS came forward with proposed regulations providing for deferral of funds in the most limited circumstances—where a Federal court makes a finding of discrimination and finds revenue-sharing funds implicated.

These regulations do not provide for deferral on the basis of the agency's own finding of discrimination or on the basis of findings of other agencies—a step ORS is clearly authorized to take under the *Chicago* decision.

Indeed, the regulations actually seek to cut back on the legally adjudicated duty to defer whenever findings of discrimination have been made by a court of competent jurisdiction.

ORS is saying to victims of discrimination in these regulations that "even though you have proved discrimination in a court and even though we know that revenue-sharing funds are involved, we will not defer unless you or others had the foresight to make revenue sharing a formal part of the court proceedings."

In other words, in the great majority of cases where discrimination has been found, ORS would not apply a deferral remedy and would be content to let the funds flow while discrimination remains uncorrected.

And, apart from the one case where Treasury deferred funds when directed to do so by a court, the agency has taken formal enforcement action in only one other instance—a simple referral to the Department of Justice of a highly publicized violation in Ferndale, Mich.

Beyond this shocking repudiation of its own authority to employ sanctions to deal with violations of the law, the agency has until now refused to initiate its own compliance reviews or investigations, a technique now generally regarded as indispensable to uncovering patterns or practices of discrimination.

Instead, ORS has relied almost entirely on the receipt of complaints and, lacking administrative controls that would assure expeditious handling, some matters have pended for a year or more without redress.

Based on experience, a person who files a complaint today might expect 5 months to elapse before ORS even determines whether a violation has taken place. Assuming ORS does find noncompliance a

further wait of more than 7 months occurs before some resolution of the matter is reached.

That is 12 months from the filing of the complaint to some sort of resolution. That does not include the time taken for enforcement because they have never invoked enforcement proceedings. So, you can add 5 months or so to that.

Further, as the U.S. Civil Rights Commission and others have reported, even the few successes that ORS has claimed through settlements are suspect because in several instances the agency has settled for less than full compliance with the law.

Third, while excusing inadequate performance on the grounds that its staff is very small and simultaneously arguing that a large staff would not comport with the philosophy of revenue sharing, ORS has failed to take steps which would enlist the energies of other appropriate agencies, Federal and State, in remedying discrimination.

For example, in 1973, ORS seemingly acceded to the suggestion of civil rights groups that it could alleviate its burden of investigation through arrangements with other agencies such as HEW, DOT, and HUD, to monitor compliance in their areas of special expertise, by providing in its regulations for such cooperation agreements.

But only in the last few months has ORS included agreements with three Federal agencies—EEOC, Justice, and HEW. And sadly, the agreements amount to little more than provision for an exchange of information, and their utility is severely hampered by ORS's refusal to make binding delegations of authority that would oblige them to accept the findings of these agencies.

I have in my testimony some further discussion about State agencies where again the agreements have little meaning. ORS also said it was going to discover civil rights violations through State fiscal audits. As you remember, that approach was highly touted by the Office of Revenue Sharing when appearing before this subcommittee 2 years ago.

That has turned out to be a complete bust since almost nothing of value concerning discrimination has been uncovered. Yesterday, ORS witnesses said they were going to try to correct that process more than 3 years after it had been initiated and proved to be a failure.

Even if the Office of Revenue Sharing took far more seriously than it does its responsibility to enforce civil rights laws, serious problems of equal treatment under law would remain.

Several months ago, spokesmen for the Ford administration told a New York Times reporter that in their view, the urban crisis was over and that measures that might arguably have been required in the 1960's were no longer needed.

But in the same story, Government statistics revealed the growing disparity between family income in the central cities and in the suburbs of our Nation's large metropolitan areas.

And while some minority families have gained sufficient mobility to find suitable housing outside ghetto areas, the racial as well as economic disparities between central cities and suburbs continue to grow.

Revenue sharing, I submit, reinforces this continuing and growing urban apartheid by providing "no strings" funding that permits relatively affluent white suburbs to meet their public service needs with-

out contributing anything to the solution of major social and economic problems that afflict the metropolitan area as a whole.

When such a suburban community uses revenue sharing funds to upgrade parks, roads, schools or other services that may already be superior to those available in central cities they are obligated under current law to assure that the services are distributed equally within the community.

But that may be of no help to a minority family that is effectively barred by zoning practices from residence in the community in the first place.

Prior to the advent of revenue sharing, a number of efforts still in the embryonic stage were being made under categorical programs to induce some degree of cooperation among local jurisdictions in metropolitan areas, for example, by promoting the concept of "fair share" housing throughout the area, which would also give minorities and lower income people better access to jobs and public services outside ghetto areas.

It does not require much empirical study to conclude that once funding is available that provides neither requirements nor incentives to metropolitan cooperation, these fledgling efforts to induce some sense of responsibility will wither and die.

That, I believe, is what is happening and what will continue to happen if revenue sharing is continued and expanded in its present form.

In short, Mr. Chairman, it is not an exaggeration to say that under revenue sharing civil rights enforcement has become a disaster area, reinforcing our worst apprehensions that this new form of allocating resources and authority would become a vehicle for dissolving hard-won Federal protections against discrimination.

Yet I do not think that conflict is inevitable between measures to expand the resources of States and local governments so that their energies will be more fully utilized in meeting pressing domestic problems and steps to assure that basic national policies, such as equal protection under the law, are fully enforced.

If these objectives are to be reconciled, however, it is clear to us that fundamental reform of the State and Local Assistance Act is required.

In the civil rights area it has now become clear that if there is to be any hope of fair and vigorous enforcement, the Congress will have to direct the executive branch to take the steps it has persistently refused to take over the past 3 years.

These include mandated timetables for completion of the investigative and enforcement processes to eliminate the interminable delays that have plagued the program; a specification of the enforcement steps to be utilized where voluntary compliance efforts fail, including the temporary deferral of funds on court or agency findings of discrimination; a requirement that settlement agreements be reduced to writing and be periodically monitored to do away with the vague promises to "do right" that ORS takes such pride in negotiating; mandated agreements with other Federal agencies to share the burden of investigation, with provision that the findings of these agencies shall be accepted as the basis for enforcement action.

In addition, it seems to me that minimum steps to arrest the trend toward urban apartheid would include an application to general revenue sharing of the provisions for regional cooperation now attached

to categorical programs and the establishment of new financial incentives to induce suburban governments to stop fencing out minorities and the poor and begin doing their share to solve the critical social problems that afflict the Nation's cities.

A harder problem is whether even if Congress makes the civil rights mandate more specific it should continue to entrust implementation of that mandate to the Department of the Treasury. It has become sadly apparent that Treasury officials, unlike their counterparts in other agencies administering grant programs, view themselves largely as an accounting unit with no policy mission and almost no responsibility to assure any result other than sound fiscal administration.

Civil rights enforcement is regarded as an unwarranted interference with the perceived mission of keeping the dollars flowing.

This may be an institutional attitude so ingrained that it will not be materially altered even by stronger direction from Congress. Thus, I believe that Congress may wish to consider whether civil rights may be better protected by a transfer of enforcement functions to an agency such as the Department of Justice that has the needed expertise and that would regard the responsibility as consistent with its major objective.

Mr. Chairman, we are in the midst of a period in which the resolve of this Nation to honor the commitments it has made in the Constitution to treat all citizens equally under the law is again being severely tested.

As important as any other question we face during this period of testing is whether the Congress of the United States is prepared to assure that general revenue sharing—the largest domestic grant program we have—is administered in a manner that acknowledges the right of blacks and other minorities to equal protection of the laws.

It has not been so administered during the past 3 years, but we hope and believe that Congress will act to set these matters right.

I apologize for taking more time than allowed in reading my statement. The gist of it is that civil rights enforcement is a disaster area and it does require the intervention of Congress to correct this.

Mr. DRINAN. It was agreed that we would hear all the members of the panel and then have questions. If that is agreeable, we will proceed to the next person who is from the Southern Governmental Monitoring Project, Ms. Susan Perry.

If you will, seek to limit yourself to what was agreed to by the committee as the optimum time.

Ms. PERRY. Good afternoon, Mr. Chairman. My name is Susan Perry. As staff counsel to the Southern Governmental Monitoring Project, I have been asked to testify before your committee this afternoon.

Mr. DRINAN. I neglected to introduce your companion, Ms. Eddie Mae Steward, president of the Jacksonville, Fla., NAACP branch.

Ms. PERRY. As you know section 122(a) of the General Revenue Sharing Act prohibits discrimination based on race, color, national origin, or sex in all programs or services receiving entitlement funds. Not until July 24, 1975, did the Office of Revenue Sharing finally draft proposed regulations which define employment or sex discrimination.

However, our experience in investigating the uses of GRS funds and discrimination in the South forces us to conclude that the act and proposed rules on civil rights requirements must be amended.

Over the past 2 years, our project has employed researchers in about 60 southern communities to investigate, among other issues, the extent of discrimination in GRS funded programs. The entire report detailing all of our findings on discrimination will be published next month. My remarks today will highlight some of our major findings.

Investigation has consistently revealed the inadequacy of ORS' antidiscrimination enforcement under the present statutory and administrative scheme. A primary congressional purpose for enacting revenue sharing legislation was to promote greater flexibility in the use of Federal funds at the local level.

But this policy may have created an inherent conflict with effective civil rights enforcement—particularly in the South where Federal intervention has historically been a decisive factor in antidiscrimination compliance.

Southern Governmental Monitoring Project investigations support the charge that ORS has been unconscionably derelict in performing its administrative enforcement duties mandated by the statute. As a result of the discriminatory conduct of recipient governments coupled with the lack of effective enforcement by ORS, black and poor southerners continue to be denied equal access to critical programs and services sponsored by jurisdictions receiving revenue sharing funds.

Employment patterns of a substantial percentage of jurisdictions and local agencies surveyed reflect a continuing bias against hiring traditionally excluded groups in programs receiving revenue sharing funds.

Southern Governmental Monitoring Project surveys disclose that women and minorities were significantly underrepresented in public employment, particularly in the public safety departments of many communities. This underrepresentation was the basis for citizens filing noncompliance complaints with ORS in several survey locations.

Let me pause at this point and commend the staff of this subcommittee which I think has done an outstanding job in appropriately making sure that a disproportionate number of the panelists here are women and also black women.

Unfortunately, we cannot say the same for the panel hearing this testimony. But hopefully, this situation is improving.

Mr. DRINAN. It is not inappropriate.

Ms. PERRY. In Jacksonville, Fla., where blacks constitute 26.5 percent of the total population but representation in the office of the sheriff amounted to no black women on the force, black men 5 percent, white women 2 percent, and white men 93 percent, the local chapter of the NAACP filed a complaint with ORS alleging blatant employment discrimination against women and blacks.

Ms. Eddie Mae Steward, the president of that group, is here with me this afternoon to discuss the Jacksonville complaint.

City officials in another SGMP monitoring site, New Bern, N.C., were charged with alleged discrimination in the allocation of revenue sharing funds used to construct two recreational centers which would have the effect of perpetuating a discriminatory pattern of dual service.

As a result of this complaint, evidence revealed that the town also maintained a lily-white fire department despite a black population of 8,968. ORS ordered New Bern to develop an affirmative action plan

that would make the all-white fire department reflective of the minority population.

Our SGMP investigator in Spartanburg, S.C., interviewed feminists who charged that city with discriminatory hiring, firing, promotion, and compensation. A review of the disposition of the Spartanburg complaint demonstrates the inadequacy of ORS procedures for the speedy resolution of allegations of discrimination.

Four months after an ORS program audit in December 1974 turned up evidence of probable civil rights violations. ORS's only enforcement activity consisted of sending a notification of noncompliance to the city.

In May 1975, a SGMP staff person contacted the ORS Compliance Manager who candidly admitted that the initial findings of the auditor had never been turned over to the civil rights unit because there was no standard agency procedure requiring such reporting.

Compliance Manager Murphy gave assurances that this "bug in the system" would be corrected. Yet, nearly 1 year after the ORS compliance mechanism was triggered, the Spartanburg complaint has grown stale in the ORS investigative stages.

I would like to update the committee by adding that on August 6, a letter was received in our office that indicated within 5 to 6 weeks, an investigation by ORS would proceed. As of October 1, no investigation has commenced in that city.

In Spartanburg and other communities, affirmative action plans have been drafted to satisfy compliance requirements. Because these reluctantly prepared employment plans are not self-executing, the documents amount to mere paper commitments in the absence of rigorous enforcement by outside agencies to compel compliance.

Failure of enforcement agencies to effectively monitor private contractor employment can have a detrimental impact on women and minorities seeking employment in the skilled construction trades.

In Asheville and Buncombe County, N.C., and in many other survey locations, government officials diverted major portions of revenue sharing dollars into what Asheville's chief finance officer described as "highly visible, one-time capital outlays."

Under the existing revenue sharing statute and section 51.51 of the proposed nondiscrimination regulations, discrimination by private contractors receiving entitlement funds is prohibited.

In communities like Asheville, where the prevailing wage rate is low and the recession has produced a reservoir of cheap labor, rigorous compliance has taken on added significance for women and minorities.

However, overlapping agency jurisdiction in enforcing minimum wage rate standards and minority and female enrollment in apprenticeship programs creates convenient loopholes for contractors interested in evading compliance.

North Carolina contractor regulation is provided under a confusing, bifurcated system of State and Federal regulation. Despite Federal law requiring recipient governments to monitor weekly wage reports filed by contractors, the Asheville mayor thought that the city's compliance obligations consisted of inserting a clause in municipal agreements which indicated that the contract was subject to Davis-Bacon requirements.

The Wage and Hour Division of the U.S. Department of Labor receives no direct reports unless an alleged violation occurs and an investigation is requested by an aggrieved party.

Similarly, this lack of effective enforcement can encourage North Carolina constructors to engage in deceptive apprenticeship programs to avoid paying legal, minimum wages to those classes of persons intended to benefit from affirmative action policies.

The Department of Labor has delegated apprentice program registration to the State. As of August 19, 1975, 143 Buncombe County apprentice programs were registered listing 38 minority apprentices enrolled in approved programs.

No minority apprentices were enrolled in the 10 programs specifically designated as having affirmative action recruitment plans. A sham apprenticeship registration can allow contractors to hire women and minority workers at substandard wages without finishing the necessary skills training.

By maintaining an appearance of minimal compliance on paper, local contractors may succeed in bypassing the State and Federal enforcement mechanisms.

In updating our information, we found out that a number of sham apprenticeship programs have been deregistered by the State, but none of these programs were deregistered for discrimination violations. Based on this information, we are convinced that unless periodic compliance reviews are mandated by law and carried out by a diligent enforcement agency, contractors in violation of affirmative action requirements will remain undetected.

In the time remaining, I would like to list some of our major recommendations for the committee.

Citizens' access to compliance information should be explicitly provided. Evidence indicates that a large number of recipient governments are probably in violation of antidiscrimination requirements, but relatively few complaints are filed with ORS.

Not many citizen interviews by SGMP researchers had sophisticated knowledge of revenue sharing and the program's requirements.

In Raleigh, N.C., for example, black members of the GRS funded police and fire departments filed more than a dozen complaints with the EEOC. These complaints have been stalled in EEOC proceedings for about 1 year. Ignorant of their rights under revenue sharing laws, complainants have ignored the ORS route to pursue their discrimination charges.

As EEOC's workload becomes increasingly unwieldy and as discrimination complaints remain unresolved, revenue sharing civil rights procedures could become an effective method for policing a significant number of employment discrimination cases.

Accordingly, we urge more effective procedures to insure citizen's accessibility to GRS funding and compliance information as well as available nondiscrimination remedies.

Revenue sharing legislation should be amended to include a permissible expense category to pay for the development of affirmative action programs.

ORS has determined that the funding of affirmative action programs must be treated as an operating expense rather than a capital

expenditure. This means that revenue sharing money can now be used for affirmative action programs only in those program areas eligible for revenue sharing funds under the present "priority" operating expenditure categories, such as public safety or environmental protection.

To aid local governments in their compliance efforts, an additional expense category to fund affirmative action must be enacted.

In light of the Supreme Court decision in the *Alaska Pipeline* case, a private right of action must be accompanied by an authorization to award legal fees against noncomplying governments.

Limitation in enforcement agency manpower requires that private suits be recognized as a remedy against discrimination. Because the Supreme Court has refused to invade what it considers the "legislature's province by redistributing litigation costs," legislation must be enacted which would explicitly authorize the courts to award attorneys' fees to successful litigants.

Revenue sharing funds of the noncomplying recipient governments could be the source of these fees.

An effective and efficient enforcement scheme must extend civil rights coverage to all programs and activities of a recipient government. Revenue sharing funds often pay for municipal services that otherwise would have been financed from the general local budget.

Local funds which are freed up by revenue sharing may in turn be allocated in such a way as to avoid civil rights requirements. SGMP's New Orleans investigation encountered a potential example of this shifting of accounts: In that city, officials frankly stated that for accounting purposes, they were attempting to place GRS funds not in such slightly integrated departments as the police, but in "safe" departments such as sanitation—"safe" because better integrated.

Furthermore, some local governments still make very little effort to document their uses of GRS funds. In Alachua County, Fla., our SGMP investigators found no reliable financial data on uses of GRS funds.

County officials claimed that a high percentage of GRS funds went to social services, but when confronted with a request to document this claim, they admitted that there was indeed no way to do so.

We reiterate the recommendation for jurisdictionwide coverage which was made by Elmer Staats, Comptroller General of the United States, in recent testimony before a Senate subcommittee, and which we included in our formal comments on the proposed ORS antidiscrimination regulations.

After certain findings have been made, the regulatory scheme should provide for automatic suspension of entitlement funds.

After a determination by Federal enforcement agents of probable discrimination and failure to secure voluntary compliance, revenue sharing funds to recipient governments should be withheld, pending further investigation and complete compliance.

Similarly, a procedure for mandatory deferral of payments of non-complying recipients, made prior to suits alleging violations of section 122, would immediately shift the burden of accelerating enforcement proceedings to local governments, and would give them a financial interest in the speedy resolution of complaints.

Individuals filing employment discrimination complaints must be shielded from retaliatory dismissal and other reprisals. The present enforcement structure offers no protection to employees who complain about job discrimination. SGMP investigators in New Bern, N.C., uncovered evidence that in small communities where the political structure is closely tied with local business, black citizens who complain about governmental discrimination fear job reprisals from white employers.

Antiretaliation provisions must be drafted to protect publicly employed complainants from threats of job termination. Non-civil-servant complainants can be protected somewhat by enacting a requirement that the enforcement agency maintain strict confidentiality of sources of discrimination information.

ORS should continue its statutory responsibilities on substantive revenue sharing matters, but civil rights enforcement should be severed from ORS and transferred to the Civil Rights Division of the Department of Justice.

Even if all of the necessary enforcement modifications are enacted, the five ORS compliance staff members exclusively assigned "to monitor the nondiscrimination requirements in a grant program running to more than 38,000 jurisdictions" cannot be effective.

Overlapping agency responsibilities produce confusion and proliferation of civil rights enforcement in various Federal departments. An example of this conflict in agency jurisdiction was provided by the Justice Department official who candidly told us that his Department takes a hands off approach to discrimination complaints which have been previously filed with ORS unless that agency requests assistance.

ORS has a similar policy for complaints that reach the Justice Department first.

From the point of view of prospective complainants, the resulting enforcement agency shopping—at least for those who learn about this peculiar informal arrangement between the Justice Department and ORS—like the old shell game, means being lucky enough to select an effective enforcement program.

Because the Treasury Department is not equipped by tradition or training to enforce civil rights requirements, we recommend that all responsibility for civil rights enforcement, other than routine information gathering and dissemination, be removed entirely from ORS and transferred to the Civil Rights Division of the Justice Department.

We also recommend that the Justice Department receive additional funds for staff and investigation expenses to carry out this responsibility.

Thank you very much, Mr. Chairman.

Mr. EDWARDS. We will now hear from Ms. Eddie Mae Steward.

Mr. KINDNESS. Are we reserving questions for later?

Mr. EDWARDS. I do not know that we are going to get a chance for questions.

Mr. KINDNESS. There are so many conclusions in this testimony, I think the record should be clarified.

Mr. EDWARDS. What would you like to do?

Mr. KINDNESS. I will wait until later if the record may include the questions.

Mr. EDWARDS. We will do the best we can.

Ms. Steward?

Ms. STEWARD. Mr. Chairman and members of the subcommittee, please allow me to say that it is my proud pleasure to be afforded this noble opportunity to speak before you this afternoon on what I believe to be one of the most crucial issues facing black and poor Americans today, the use of revenue sharing funds in local communities.

My oral presentation will attempt to summarize several key points as addressed in my written statement. One is the complaint and the application of revenue sharing funds in Jacksonville, Fla., involving two areas: Employment, primarily in the office of the sheriff and a division of the fire department; and two, the application of revenue sharing funds as it relates to recreational facilities.

UNEMPLOYMENT

The statistical breakdown of the sheriff's office was provided in the written statement. This data was provided by the office of the sheriff. Therefore, the statistical validity can be and has been documented in the Florida Advisory Committee of the U.S. Civil Rights Commission.

This data indicates that the office of the sheriff has and is continuing to discriminate against blacks and women. The one highest ranking position held by a black person is that of chief, and he is charged with the responsibility of police-community relations and more specifically police-community relations in the black community.

I hasten to point out here that the duties of the black chief is different from white chiefs in that chiefs are usually assigned to zones that cover a large portion of the city and has under his supervision those uniformed patrolmen assigned to his zone.

This places him in a decisionmaking role that directly relates to the problems involving people. The decision to place the first black chief in the position of chief of the police-community relations was viewed as a compromising one and one with no authority or control.

Further, it was felt that this position could have been held by a person of lesser rank. We have documented cases where blacks have passed a written test, but were screened out in other areas that had no bearing on one's ability to function on the job as a policeman.

Furthermore, the office of the sheriff has taken a negative attitude toward the development of an affirmative action program that would set forth measurable timetables for minorities and women.

A black woman—and I wish to update my written statement—a black woman just completed the police academy training 1 week ago and is now the first black female in the city of Jacksonville's Office of the Sheriff Uniform Division.

The agility test requirement gave rise to discriminatory complaint filed with the office of EEOC by a group of white women. This was excluded as a part of the entrance requirement a few days ago.

The rescue division of the fire department hired the first black medical technician recently and according to my information, this, too, is another critical area in that several complaints are constantly being filed with our office by black citizens alleging that white rescue workers have refused to provide service to them where an auto accident is involved.

Sometimes there are no visible injuries. More specifically, on this past Monday, a complaint was filed with our office that a 10-year-old boy was hit by a car while riding a bicycle and because he was

sitting on the curb at the time the rescue workers arrived, they refused to take him to the hospital and told the mother that she would have to transport him.

The mother transported him and he was hospitalized with a concussion. They have refused to assist black people onto stretchers and bystanders have provided this service.

On the complaint of recreation, the city of Jacksonville is a large area covering 840 square miles. Revenue sharing funds have been used to develop and upgrade recreational facilities that are inaccessible to blacks and poor white communities.

In one instance, several million dollars were allocated to construct a recreational site 20 miles from the inner city. Moreover, it is located near the beaches area in an upper middle class white community.

We spent several months looking at the trend of revenue sharing funds in Jacksonville. Thus, in July 1975, the mayor vetoed a controversial bill that would have repurchased a golf course that was sold in 1960 by the city when black citizens won a civil rights case against the city.

A group of citizens were told by the mayor that he would support the repurchase. However, he later vetoed the bill. This property is approximately 130 acres and sits on the northern end of the city and is in a predominantly black area.

In 1960, when this golf course was sold, this same area was white. The repurchase would have cost \$288,000 in cash. The mayor said that during these inflationary times, the city could not afford the purchase.

Private access road to an industrial complex in Jacksonville: The city council learned that the administration had overspent in this area by more than \$37,000. Funds have been used to build such things as boat ramps, tennis courts, softball complexes, and other equipment, all in white areas while minor lighting, basketball courts, some fencing, and other minor innovations were made in black and poor white areas.

As of this day, there is not a park in the black community that was comparable to the white areas before the new renovations took place. Several parks are sitting idle in the black communities that were closed in 1960 when the court ordered these public facilities integrated, and is in a rundown state because of the city's failure to provide adequate upkeep.

Millions of dollars are being spent on new sewerlines, but much of this work is being done in the downtown area and in all-white areas. Where sewer work is being done in poor communities, it is necessary to do so in order to accommodate construction and/or renovations of sewer treatment plants.

This, Mr. Chairman, concludes my oral presentation.

Mr. EDWARDS. Thank you very much.

Now, we will hear from Ms. Sarah Austin.

Ms. AUSTIN. Mr. Chairman, my name is Sarah Austin, vice president of the National Urban Coalition, and field director of our local coalition division which has monitored the effects of general revenue sharing over the past 2 years in the 10 coalition cities of Pittsfield, Wilmington, Bridgeport, Detroit, St. Paul, Oakland, Minneapolis, Pasadena, Racine, and Baltimore.

I therefore welcome this opportunity to address you on an issue of such concern to those whom I represent. For in this time of urban

fiscal uncertainty, the quality and even the fabric of urban life is greatly dependent upon the priorities you define here.

The steering committee of the National Urban Coalition in its fall meeting last week engaged in a long and intensive debate on general revenue sharing.

Our board concluded that it would only support an amended general revenue sharing program which particularly focuses on two of the present inequities in the way the law operates in regard to minorities.

One is the inadequate need formula which fails to take into account the disproportionate burden of cities which have a high percentage of poor unemployed and underemployed minorities. And a second is a weak and sometimes nonexistent enforcement of civil rights guarantees in the allocation of general revenue sharing funds.

Not everyone will be able to bring lawsuits to assure that jurisdictions do not discriminate in hiring and promotion with the use of Federal funds. Not everyone will be able to go to court and seek to make certain that some of the general revenue sharing funds are not used to abate water and sewer taxes while ignoring the social needs of the poor as in the Atlanta case.

We are opposed to the notion that a seriously understaffed Office of Revenue Sharing can do the kind of monitoring that is required in the face of the widespread tendency to see these funds as "magic money" left on a stump, miraculously exempt from the supposedly well-established principle that all tax dollars must be subject to equal citizenship requirements.

It ought to be possible, at one and the same time, to give to hard-pressed cities the fiscal relief they deserve without having to junk the Constitution in the process.

Another time around it would be our hope that our St. Paul Coalition would not have to spend endless hours and energy attempting to make sure that Federal funds going to the local police department would finally result in the hiring of one black policeman.

It is in order to give you the benefit of our experiences in these cities that I would like to mention the results of the joint GRS monitoring project the National Urban Coalition sponsored in conjunction with its local affiliates and the other members of this panel.

Our basic and most instructive finding was that in this time of unacceptably high national unemployment, GRS funds are actively "financing widespread discrimination in public employment and local services."

Moreover, in spite of the specific legislative provisions against discriminatory hiring practices written into the State and Local Fiscal Assistance Act—sections 122(a) and 51.41—our study has found a "nationwide pattern of underrepresentation of minorities and women" in State and local governmental agencies and programs.

The Treasury Department's Office of General Revenue Sharing has documented statistics which indicate that most cities are using their GRS funds for police and fire protection. It is, therefore, all the more significant that our GRS monitoring project has found systematic discrimination in hiring practices in these very agencies.

For example, among firefighters, 95 percent of employees are white and male, while only 3 percent are black, and 1.3 percent female. Police force statistics are equally instructive. Ninety-one percent of the force is white and male, 6.3 percent is black and 12 percent female.

In the area of salaries and job classification, women and minorities suffered the same type of systematic relegation to lower level positions and payments.

The recent Bureau of Labor Statistics September figure on the national unemployment rate of black males and of black women is 12.1 percent, while the national rate is 8.3 percent. This represents a tragic demonstration of the accuracy of our findings.

It is instructive to cite here an example of what our local coalition monitors have discovered. The example of St. Paul, Minn., is most revealing of the negligence of the Office of Revenue Sharing in the area of equal employment. For, although this city received in fiscal year 1974 over \$5½ million in revenue-sharing funds, and spent over \$5 million of these dollars for public safety, only 4 percent of the total fire and police force are black.

When this was brought to the attention of ORS by our local coalition in St. Paul, the administrative remedy of fund deferral was refused.

The consensus of the coalition is that the civil rights aspects of GRS encompass broader consideration than affirmative action alone. Other categories are equally important in their impact on urban residents and minorities.

Of prime significance is the fact that with population an important factor in allocating GRS funds, jurisdictions reaching the 145 percent ceiling lost a full per capita share for every person not counted in the census figures. Despite the general acknowledgement that blacks are significantly undercounted, the Office of Revenue Sharing has not made allowances in data to compensate for such omissions.

In fact, in 1973, the Census Bureau estimated they missed 1,880,000 blacks in the 1970 census count. This is four times the undercount for whites. And, while there is no "acknowledged" census undercount rate for Spanish surnames, it is widely recognized that the American Latino community is consistently underrepresented in the census.

This, areas with large concentrations of blacks and Latinos are losing important amounts of GRS funds, and, no administrative remedy is yet in sight. I think I can speak on behalf of our constituents on this matter.

In conclusion, we feel a reordering of the priorities of general revenue sharing is clearly needed. We would suggest that the Subcommittee on Civil and Constitutional Rights seriously consider correcting the inequities which mitigate against the needs of 70 percent of our population; that is those people living in urban areas, who rely on your help to devise effective and equitable solutions to the problems they face.

I thank you for the opportunity to appear before this subcommittee. Mr. Chairman, I think it was less than 10 minutes.

Mr. EDWARDS. You did very well. Thank you.

Ms. Alice Kinkead?

Ms. KINKEAD. Mr. Chairman and members of the subcommittee, my name is Alice Kinkead and I am director of the Human Resources Department of the League of Women Voters Education Fund. The League of Women Voters is a nationwide organization representing over 1,300 constituent leagues and 140,000 members.

On behalf of the league, I thank you for inviting me to testify on the civil rights aspects of general revenue sharing. Pablo Eisenberg,

director of the Center for Community Change, who is not testifying here today, asked me to convey to you his organization's full enforcement of the league's testimony.

Two years ago, the League of Women Voters Education Fund joined with three other national organizations, the Center for Community Change, the Center for National Policy Review, and the National Urban Coalition, in establishing the national revenue sharing project.

Its objective has been to assess the impact of the General Revenue Sharing Act's reallocation of authority and resources upon the needs of less advantaged citizens and upon efforts to assure that minorities and women receive equal treatment.

Beginning in November 1973, the project undertook a massive monitoring effort on local, State, and Federal levels. Approximately 53 local and 6 State affiliates of the project's sponsoring organizations were involved in monitoring the implementation of general revenue sharing.

The league conducted the State-level monitoring in six States: California, Iowa, Massachusetts, Michigan, Tennessee, and Texas. One hundred and twenty league members, trained and supervised by professional staff, used a monitoring instrument developed with the help of the Joint Center for Urban Affairs of Harvard-MIT.

These fieldworkers conducted over 300 interviews with elected officials, department heads, media representatives, and community organization leaders in the six States. Monitors also collected extensive demographic information, relevant studies, reports, newspaper clippings, and budget documents to help them evaluate the performance of the States in administering GRS funds.

The gathered data, monitors' evaluations, and interviews were then assembled for comprehensive analysis by the League of Women Voters Education Fund national project staff.

The findings have now been published in a volume titled "General Revenue Sharing and the States"—the first major report to be made on the States' compliance with the GRS law and regulations, as they spent over \$1 billion of the GRS funds exported to them from Washington between October 20, 1972, and June 30, 1974.

Because much has already been researched and reported about local government's performance and so remarkably little about the States'—although \$1 in every \$3 of GRS money passes through their hands—I wish to give you a somewhat detailed "report card" on the six States studied.

My facts are drawn from the report just mentioned. My focus is on civil rights noncompliance, specifically in employment.

Monitors found some gaps in State compliance, both with the spirit of the law and the letter of the regulations. While their findings do not necessarily indicate a total lack of concern about civil rights, they do point to some serious sins of omission in enforcement.

Confusion about, or lack of commitment to, the civil rights requirements of the law appeared to be the norm in the six monitored States. The questions boil down this way: Can the Federal Government "pass through", along with the money, its responsibility for seeing that Federal dollars are spent in a nondiscriminatory way—a responsibility mandated by more than this single law?

Is it reasonable to assume that States will police themselves? Who is ultimately responsible for enforcing section 122? Is section 122, in fact, enforceable?

The State and Local Fiscal Assistance Act directs the Department of the Treasury to insure enforcement of the provision of section 122. Treasury issued regulations to this end: By default, enforcement of State compliance with section 122 fell to the States themselves. How are they executing this added responsibility?

The answer is, not very well, even when the will exists—and it does not always. States, stuck with assigning a fox to watch the chicken coop, usually left the job to an existing State compliance agency. And those agencies have had three problems: No power, no money—which means no staff—and no help from the Feds.

The task has been a huge postscript added to the job description of agencies often already underfunded and overburdened. The level of civil rights enforcement has varied from State to State as these factors came into play.

The Governor's Office of Equal Employment Opportunity in Texas, now eager to take a forward step, is strapped by a yearly budget of \$25,000, a staff of 18 partly borrowed from the Governor's budget, and a lack of authority. It cannot issue cease-and-desist orders, initiate court action, or impose fines for violations.

This office has only two options: To ask the attorney general to file suit against agencies that refuse to file affirmative action plans, or to ask the Governor to cut off agency funds. Neither is currently a likely recourse given the lack of aggressive support provided to the Office of Equal Employment Opportunity to date.

Texas is not the only State where civil rights agencies are understaffed, underfunded, and underpowered. The Iowa Civil Rights Commission primarily uses conciliation to resolve complaints. It can issue cease-and-desist orders, but rarely does. Court action is not an effective option, because the commission has no subpoena power.

Moreover, it is hard to identify discrimination problems in Iowa, since the Commission treats this kind of information as confidential. Monitors were told that there had been discrimination complaints filed against the State, but in the last 3 years, none have reached the hearing stage of resolution.

A review of summarized State employment data shows that Iowa has problems in employment practices that may warrant a charge of discrimination on the basis of sex and possibly on the basis of race as well.

For example, the average male salary is \$2,750 more than the average female salary. White men earn an average yearly salary that is \$2,770 more than white women; whites average close to \$1,000 more per year than blacks.

There are additional disparities in terms of earning power. While 35.1 percent of the total number of males earn less than \$8,000, 75.6 percent of the total number of females fall into this category. Similarly, 65.5 percent of the total number of blacks earn less than \$8,000, with 51.3 percent of the total number of whites in the same category.

As of June 1974, no revenue-sharing money was reported as having gone directly into the State agencies covered by these statistics; none-

theless, it is clear that the \$32 million allocated to education supplanted an almost identical amount of money from the general fund.

One must conclude, then, that in truth, revenue-sharing dollars found their way into numerous State agencies which continue to discriminate in employment. Even assuming vigorous civil rights enforcement, the fungibility factor makes real compliance an illusion—short of 100 percent nondiscrimination in all State employment.

California's Fair Employment Practices Division, charged with eliminating discrimination in housing and employment, is another example. It is typically understaffed, as well as limited in legal enforcement authority. The division's 5 affirmative action program staff and 25 consultants work simultaneously on over 75 investigations, with an active yearly caseload of nearly 3,700. Its chief executive claimed only a 30-percent success rate in resolving discrimination complaints.

No doubt understaffing can account for at least part of the high percentage of unresolved complaints, but the lack of enforcement power is also to blame.

On the other hand, the Massachusetts Commission Against Discrimination and the Michigan Civil Rights Commission appear to have the power to deal with discrimination problems. They both negotiate, hold hearings, and can initiate court action, though final court orders must be enforced by the court.

Unfortunately, although the power is there, the staff is not. The Massachusetts Commission appears to have the more serious staff problem. According to its chairperson, it employs 60 but needs 300.

Tennessee's Human Development Commission has neither adequate staff nor sufficient enforcement powers. It investigates, conciliates, and gives technical assistance with its limited staff of five, but its only power is the endorsement of the Governor.

Governor Dunn seemed to have both the commitment and the power to eliminate discrimination, but progress has been slow. In January 1972, he established an affirmative action program. As of December 1973, two State agencies still had no minority employees.

More than two-thirds of the 34 agencies included in the 1973 Consolidated Affirmative Action Report have minority employment that deviates by more than 5 percent from the 1970 minority population.

Even more relevant are the 24 of the 34 reporting agencies which deviate more than 5 percent from the total minority percentage in State government. Corrections, mental health, and social services traditionally have preponderances of minorities, usually in low-paying, unskilled jobs. In 1973 over 50 percent of the minority persons employed by the Tennessee government were in these three agencies.

Some revenue-sharing dollars were spent by two of these three. It seems to the league that ORS has been remiss in its responsibility by failing to take a close look at the more detailed EEO-4 forms which would document what appears to be discrimination.

This criticism is particularly relevant in light of the fact that the Transportation Department, with a 90-percent white male work force, received nearly one-third of the State's revenue-sharing dollars.

If impotent agencies make State enforcement a lot less than it should be, the Office of Revenue Sharing's supine attitude about its job of policing the police makes us wonder if they think section 122 is just one more piece of congressional rhetoric.

On February 1, 1975, the Texas League of Women Voters wrote a complaint alleging noncompliance with civil rights provisions of the general revenue-sharing law to the U.S. Attorney General. A letter was also sent to Graham Watt, the Director of the Office of Revenue Sharing, to notify him of the probable violation and to request that he use his authority to disallow the continued misuse of general revenue-sharing funds by the State of Texas. Both letters were accompanied by extensive and full evidence to support the allegation of noncompliance.

Texas monitors had obtained data from the recently created Governor's Office of Equal Employment Opportunity which showed that women, black and ethnic minorities are underrepresented in Texas State employment and occupy a disproportionate share of the low-skilled, low-paying jobs.

The data, collected and analyzed by the EEO, in part to meet requirements of the Federal Equal Employment Opportunity Act of 1972, included employees from all State agencies.

Blacks, both male and female, held only 7.7 percent of the 70,976 jobs included in the Governor's EEO study, while they make up 12.7 percent of the total State population according to the 1970 census. Spanish-surnamed individuals, comprising 18.5 percent of the population, held only 11.1 percent of the jobs.

As salary levels increased, minority percentages decreased. In the \$16,000 to \$24,999 range, 96.4 percent of the jobs were held by white non-Spanish-surnamed persons; 2.5 percent were held by Spanish-surnamed persons and 0.5 percent by blacks.

Women constituted 41.3 percent of the State's employees, but held very few of the high-paying jobs. The majority, 57.4 percent, earned less than \$6,000; only 10.6 percent of the jobs at or above the \$16,000 level were held by women.

The record within the specific agencies that got State GRS funds is no better and in some instances is much worse. Employment data for the 42 agencies, commissions, and courts receiving GRS funds shows that black employees in 1973 earned an average of \$5,585, a wage level far below the average of \$7,797 for white non-Spanish-surnamed persons.

In these agencies 79.9 percent of the black employees, 68.2 percent of the Spanish-surnamed and 29.8 percent of the women earned \$6,000 or less. Of those earning \$16,000 or more, only 5.1 percent were Spanish-surnamed, 0.8 percent were black and 12 percent were female.

The Department of Justice began a full investigation of Texas State employment practices in October 1974, after getting numerous complaints of discriminatory practices from individuals in Texas and from Federal level agencies as well.

On April 17, 1975, fully 21½ months after the complaint was made public, the Office of Revenue Sharing sent a letter of inquiry to the Governor explaining the nature of the league's charge of discrimination and requesting an explanation within 30 days.

The Governor requested and was granted a 90-day extension. Meanwhile the State of Texas continues to enjoy the uninhibited flow of GRS funds. Documentary evidence of employment discrimination has been on file with the Federal Equal Employment Opportunity Office since 1973 and it is therefore available to the Office of Revenue Sharing. Furthermore the evidence accompanied the February 4, 1975, letter from the Texas League of Women Voters to Graham Watt.

The Office of Revenue Sharing has had more than ample cause to initiate its own investigation into the probable misuse of general revenue-sharing funds and to play its mandated role of either obtaining compliance or terminating GRS funds to the State.

An ORS official stated on August 5, 1975 that the use of administrative proceedings against the State of Texas has not been ruled out as a means of obtaining compliance, but for the present ORS is working with the Department of Justice and is hopeful that the matter will be resolved without a suit. So far State officials have not responded to the Texas league about its complaint.

The pace of action by the Office of Revenue Sharing and the lack of any reaction at the State level call into question whether accountability has any real meaning in the general revenue-sharing program. Redress for the employment discrimination of the magnitude discussed here, if left to a private court suit, could involve several years and costs running into tens of thousands of dollars.

The citizens of Texas should not be forced to choose between accepting the State's continued employment discrimination or spending very large sums of time and money to pursue the matter in court.

Events to date have made a mockery of power to the people and citizen accountability in Texas. It can only be hoped that Justice Department action or a late awakening to responsibility on the part of the Texas government alters this current abuse of the law and the people.

The situation in Michigan is different. Here the ORS has played a somewhat more active role.

The Michigan controversy stems from the 1972 termination of Federal financial assistance to the Ferndale School District for its refusal to desegregate the Grant Elementary School, as required by title VI of the Civil Rights Act of 1964.

This action, the first of its kind in a northern school district, took place only after the Department of Health, Education, and Welfare used every resource to get voluntary compliance with the law.

The full procedure, which took over 4 years from the initiation of the action in 1968 to final termination in 1972, was upheld by the Sixth Circuit Court of Appeals in 1973. By refusing to hear the case the U.S. Supreme Court endorsed the circuit court opinion.

ORS says that Michigan used its general revenue-sharing funds for the State retirement system for public school teachers which is of direct value to the Ferndale School District, hence the action violated the antidiscrimination provisions of the general revenue-sharing law. On November 4, 1974, the State of Michigan was advised by the Office of Revenue Sharing of the probable violation and requested a remedy or adequate defense of this expenditure within 60 days.

None was presented. Governor Milliken in a letter to ORS, dated January 30, 1975, argued that the funds do not directly benefit the Ferndale School District and that no violation of the law had occurred.

The Office of Revenue Sharing chose not to pursue the matter under their own auspices, an action which could, and according to many civil rights advocates does, require the deferral of future revenue sharing payments to Michigan.

Instead it has asked the Department of Justice to take corrective action. The Department of Justice notified the Ferndale School District in a November 14, 1974, letter that it was not in compliance with

title VI and has since requested a written plan of action that will desegregate the Grant School.

No constitutionally acceptable plan has been forthcoming. Consequently the Justice Department filed suit on May 24, 1975, against the district and included the State of Michigan as a defendant in the suit at the request of ORS.

Meanwhile the Grant School in Ferndale continues as an all-black facility and ORS money continues to flow into the State coffers.

While the *Ferndale* case slowly grinds its way through the courts, with small evidence of concern for the maxim that justice deferred is justice denied, the Michigan Department of Civil Rights has taken one significant action. On September 30, 1974, the department's executive director issued a memorandum that sets forth "Recommendations for Action To Insure Equal Opportunity in Federal Revenue Sharing."

These recommendations include the issuance of a nondiscrimination policy statement, an executive order specifically addressing nondiscrimination provisions of general revenue sharing, implementation of a review and monitoring program, the delegation of enforcement authority to the department of civil rights, and perhaps most importantly, the appropriation of a portion of the State's GRS funds to implement and carry out these programs.

Clearly the development of this program is in part a response to the LJV's monitoring efforts.

While the work of the league in Michigan and Texas must be commended, the amount of volunteer time at the State level and the professional time and money that went into the effort at the national project level must not be overlooked. Positive results are indeed satisfying, but the effort cannot be repeated in each of the 50 States and 38,000 local jurisdictions receiving GRS funds.

The volunteer time and financial and professional resources involved in backing up such an effort would be enormous. Yet without these citizen efforts and absent some commitment on the part of Federal agencies responsible for enforcing the law, GRS funding of discrimination by State governments is built into the program.

In conclusion, evidence shows that without Federal level enforcement of civil rights provisions, State governments knowingly or unknowingly perpetuate the existing pattern of discrimination, particularly in State employment.

There must be a Federal level commitment to the eradication of racial, ethnic, and sex discrimination. If general revenue sharing is renewed, specifications must be written into the law, and the regulations carefully designed to carry out that commitment.

Relying on the good will and intentions of State government officials will not suffice, nor can we be content with the delegation of civil rights enforcement of Federal law to State human rights agencies or civil rights commissions. Such State agencies are typically understaffed and lacking in authority to give full redress in discrimination cases. Their cooperation should be solicited, but not as an accompaniment to a strong Federal level enforcement effort.

In light of the abysmal civil rights enforcement record over the past 3 years, Congress should not endorse renewal of the program unless that renewal contains major changes in the civil rights provi-

sions of the act coupled with the insistent congressional pressure for effective administration.

Thank you, Mr. Chairman.

[The prepared statements of the panel members follow:]

STATEMENT OF WILLIAM L. TAYLOR, DIRECTOR, CENTER FOR NATIONAL POLICY REVIEW, SCHOOL OF LAW, CATHOLIC UNIVERSITY

Mr. Chairman and members of the subcommittee, my name is William L. Taylor, and I am Director of the Center for National Policy Review, a legal research and advocacy group affiliated with the Catholic University Law School. The Center is one of four organizations which jointly sponsor the National Revenue Sharing Project—an intensive effort to monitor the operation of general revenue sharing in communities throughout the nation and to gauge the impact of the law on minorities and poor people. Among the Center's responsibilities are continuing oversight of the Federal government's administration of revenue sharing, particularly the civil rights provisions of the law, and legal representation of those seeking administrative redress for violations of the law. Recently we completed a substantial report for the National Science Foundation on Civil Rights Under General Revenue Sharing. The subcommittee has been furnished copies of this report and certainly may reproduce any portions that it deems relevant and useful to complete the record of this hearing.

We appreciate the timeliness of these hearings and the opportunity to present testimony.

As you know, civil rights organizations have been concerned for several years that the guarantee of equal protection of the laws will not be maintained under general revenue sharing or under other measures that have as their stated purpose, an increase in "local control" over social welfare programs. Whatever one may think about "local control" as a theory, black people and other minorities have special reason to know that in practice they are the victims under any program that is locally controlled without effective federal safeguards. This concern does not mean that civil rights groups are in love with the detailed administrative regulations and plain old red tape that have marred some aspects of categorical programs. We have concern, as you do, about the speedy and efficient delivery of services to citizens.

But there is a basic distinction to be made between the myriad strings that have been attached to some federal programs and requirements of civil rights. The right to be treated fairly and without discrimination based on race, sex or other invidious considerations in programs made possible by government funds is not simply an administrative requirement or string. It is a fundamental ground rule having to do with the integrity of the processes of government. Indeed, I believe that national guarantees of civil rights fall into the same category as "one-man, one-vote"—they are rules imposed from above on states and local governments, not for the purpose of making them weak or dependent but to assist them in becoming strong enough to be vital parts of a functional federal system.

Certainly Congress in enacting the State and Local Fiscal Assistance Act of 1972 recognized that assuring equal treatment under law was a fundamental responsibility that must remain in the hands of the Federal government even when the mechanisms for allocating federal assistance were being altered substantially. The requirement of nondiscrimination, as you know, was mandated in Section 122 of the Act and specific responsibilities to enforce the law and to correct violations were given to the Department of the Treasury and the Department of Justice.

The enactment of Section 122 also constituted implicit recognition by Congress that, contrary to the views held by some people, the duties of the federal government are not satisfied simply by defining the right to equal treatment and providing a means for private redress in federal courts. Where the denial of rights has been pervasive, as it has in almost every governmental function affecting black citizens and members of other minority groups, private lawsuits can make only a small dent in remedying the problem. What is required, and what is contemplated by Title VI of the Civil Rights Act of 1964, Section 122 and other provisions of law, is full use of the powers of federal agencies assisted by federal funds.

But any reassurance that civil rights groups may have derived from the inclusion of specific antidiscrimination provisions in the revenue sharing law has been dissolved by actual experience with the way the law has been administered. Three years have elapsed since enactment of the law, a sufficient period to make

judgments about the manner in which it is being administered by the Department of Treasury and its Office of Revenue Sharing. It has become clear to us from our own investigations and from studies conducted by others 1) that there is pervasive discrimination in programs and activities assisted by revenue sharing funds and 2) that the Office of Revenue Sharing, the agency chiefly responsible for securing compliance with the law, has failed to take effective steps to prevent or remedy discrimination.

THE PREVALENCE OF DISCRIMINATION

I would like to touch briefly on two areas where problems of discrimination commonly arise under the revenue sharing law—discrimination in the employment practices of state and local governments and discrimination in local services provided with federal assistance.

It has been clear for many years that racial discrimination in state and local employment is a violation of the equal protection clause of the 14th Amendment. But it was not until 1972 that Congress provided a remedy for such discrimination by amending Title VII of the Civil Rights Act of 1964 and by including Section 122 in the State and Local Fiscal Assistance Act. In light of this, we were not surprised to discover that in the great bulk of 33 jurisdictions examined by our project—mainly medium and large cities—there were wide gaps in the per cent of minorities and women in the work force and the per cent employed in particular departments and agencies of government and often in the city as a whole. In one large southern city with a 50 per cent minority population, the fire department which received revenue sharing funds had fewer than 3 per cent minorities. In a border city, with a 24 per cent minority population, the health department which received revenue sharing funds employed only 7% minorities. And there were several cities with departments which employed few minorities or women not only in professional or managerial positions, but even in blue collar and secretarial positions where minorities were employed elsewhere in the city. There is evidence also, as others will testify, that similar disparities exist in employment in state agencies.

A study of 26 local governments conducted by the Comptroller of the Currency does indicate that in a few jurisdictions—mainly large cities—some progress had been made in recent years in reducing very wide racial disparities. But the basic findings of the GAO study reinforce those which we reached independently. These disparities reflected in the GAO report and our study are a reflection of various state and local practices that fail to conform to the requirements of federal civil rights law—the use of tests for hiring and promotion that exclude minorities and that are not job related, the failure to adopt affirmative techniques for recruiting minorities and women, and the persistence of instances of overt discrimination. Even if we assume that most states and local governments are willing to cooperate in bringing their employment practices into compliance with the law, a major effort by the federal government is clearly required. And, with state and local government employment constituting the most rapidly expanding field of job opportunity in our national economy over recent years, it is also clear that such an effort by the federal government is crucial to the goal of minorities to overcome the barriers posed by past discrimination and to become full and productive participants in American society.

Similarly, the requirement that governmental services and facilities be furnished equally and without discrimination on the basis of race or other invidious considerations is an area where legal remedies have emerged only recently. It was not until 1972 that a federal court of appeals, in the case of *Hawkins v. Town of Shaw*, held that under the 14th Amendment a remedy must be provided when services such as street lighting or paving are clearly inferior in black neighborhoods to those provided in white neighborhoods. More than one-third of the complaints pending at the Office of Revenue Sharing concern disparities in services, and among them are several where the allegations are a blatant discrimination of the type found in *Shaw*. In several of these cases including Amarillo, Texas, Bogalusa, Louisiana and Ouachita Parish, Louisiana, ORS has found substance to the allegations, but the cases either remain pending or the agency has accepted the most general pledges that the discrimination will be remedied.

In the medium sized and larger cities of the South and North where our monitoring project was conducted, discrimination in services was not as blatant as that found in *Shaw* or in several other small southern communities, but people in minority and ghetto neighborhoods expressed strong feelings that they were

not receiving equal services. In these situations, adequate implementation of the civil rights provisions of the revenue sharing law demands careful investigation to determine whether discrimination exists and the development of objective standards of measuring governmental services. Yet few investigations have taken place and, although we have been told that the Office of Revenue Sharing is preparing a "guidebook" on municipal services, it has not yet issued or even developed objective standards by which the equity of services subsidized by revenue sharing can be gauged. Thus as matters now stand, increasing federal resources are being applied through revenue sharing and other federal laws to assist local governmental services, while the inaction of the ORS permits these sums to be used in ways which may violate the Constitution and laws and thwart the national goal of providing "a suitable living environment" for every American citizen.

THE PERVERSIVE DEFAULT OF ORS

One may sympathize with the problems facing an agency charged by law with preventing discrimination in some 39,000 state and local governments not only in the activities I have described but in other areas as well, such as in the employment practices of private contractors utilizing revenue sharing funds for construction projects. But the fact that the task is one of great magnitude provides no excuse for the inaction and lethargy that has marked ORS' performance in carrying out the duties placed upon the agency by Congress.

In the first place, the opportunity to create a climate encouraging compliance with the law has been lost by the public utterances of high officials of the Department of Treasury. Repeatedly, they have described revenue sharing as a program "free of strings", different in its administration in almost every respect from programs of categorical aid. Civil rights requirements have occasionally been mentioned, but they have been treated as secondary matters, with no suggestion that the Treasury Department was prepared to make vigorous use of its enforcement authority to remedy violations. With these signals emanating from the top, it is little wonder that few state and local governments have been impelled to examine their past practices and to take corrective action where needed.

Secondly, the Office of Revenue Sharing has studiously ignored the teaching of experience under earlier civil rights laws that the key to success in performing a major enforcement task is to establish good compliance machinery and to demonstrate a willingness to impose sanctions on those who violate the law. During the 1960s, the Department of Health, Education and Welfare was able to bring about successful integration of public schools in many districts in the South by making clear that it would withhold funds from districts that did not submit acceptable plans. Once HEW had employed this remedy in a number of cases, other districts began to come into compliance without awaiting the imposition of a sanction. Particularly important in this process was the decision of HEW to defer new funding to a district upon a finding of probable noncompliance even in advance of completion of all the steps of the complex administrative process leading to fund termination.

But ORS refused to consider the use of deferral as a remedy on grounds that its program was "different" and it has persisted in this refusal even after having been told by a federal district court that it had legal authority to defer funds subject to the adoption of appropriate regulations. In fact, ORS has deferred revenue sharing funds only once and then only when specifically ordered to do so by a federal court because judicial findings had been made that the City of Chicago had practiced racial discrimination in its police department which received large sums of revenue sharing money. Belatedly last spring ORS came forward with proposed regulations providing for deferral of funds in the most limited circumstances—where a federal court makes a finding of discrimination and finds revenue sharing funds implicated. These regulations do not provide for deferral on the basis of the agency's own findings of discrimination (or on the basis of findings of other agencies), a step ORS is clearly authorized to take under the Chicago decision. Indeed, the regulations actually seek to cut back on the legally adjudicated duty to defer whenever findings of discrimination have been made by a court of competent jurisdiction. ORS is saying to victims of discrimination in these regulations that "even though you have proved discrimination in a court and even though we know that revenue sharing funds are involved, we will not defer unless you or others had the foresight to make revenue sharing a formal part of the court proceedings." In other words in the great majority of cases where discrimination has been found, ORS would not apply a deferral

remedy and would be content to let the funds flow while discrimination remains uncorrected.

And, apart from the one case where Treasury deferred funds when directed to do so by a court, the agency has taken formal enforcement action in only one other instance—a simple referral to the Department of Justice of a highly publicized violation in Ferndale, Michigan.

Beyond this shocking repudiation of its own authority to employ sanctions to deal with violations of the law, the agency has until now refused to initiate its own compliance reviews or investigations, in a technique now generally regarded as indispensable to uncovering patterns or practices of discrimination. Instead, ORS has relied also entirely on the receipt of complaints and, lacking administrative controls that would assure expeditious handling, some matters have pending for years or more without redress. Based on experience, a person who files a complaint today may expect five months to elapse before ORS even determines whether a violation has taken place. Assuming ORS does find noncompliance a further wait of more than seven months occurs before some resolution of the matter is reached. Further, as the U.S. Civil Rights Commission and others have reported, even the few successes that ORS has claimed through settlements are suspect because in several instances the agency has settled for less than full compliance with the law.

Thirdly, while excusing inadequate performance on grounds that its staff is very small and simultaneously arguing that a large staff would not comport with the philosophy of revenue sharing, ORS has failed to take steps which would enlist the energies of other appropriate agencies, federal and state, in remedying discrimination. For example, in 1973, ORS seemingly acceded to the suggestion of civil rights groups that it could alleviate its burden of investigation through arrangements with other agencies, such as HEW, DOT and HUD, to monitor compliance in their areas of special expertise, by providing in its regulations for such cooperation agreements. But only in the last few months has ORS included agreements with three federal agencies—EEOC, Justice and HEW. And sadly the agreements amount to little more than provision for an exchange of information, and their utility is severely hampered by ORS's refusal to make binding delegations of authority that would oblige them to accept the findings of these agencies.

If ORS has been lethargic in its dealings with other federal agencies, it has been almost totally derelict in establishing useful relations with state and local human rights agencies. The State and Local Fiscal Assistance Act is one of the few laws that provides a role for governors in resolving complaints of civil rights violations, and ORS has stated that it wants to enlist the help of states and localities in securing civil rights compliance. Yet we found in our monitoring project that only 52 percent of local human rights officials had any accurate idea of how revenue sharing money was being used in their communities and only one or two had been given any review responsibility for the use of general revenue sharing funds. In other surveys commissioned by the National Science Foundation, it was found that 70 to 80 per cent of the local officials interviewed stated they had received no communication from the Federal government or their state on civil rights requirements and that many gave no consideration to equal opportunity standards in allocating funds.

ORS has recently entered into agreements with several state human rights agencies for the exchange of information and for the conduct of state investigations to which ORS will give "substantial weight." But these agreements have been concluded without regard to whether state agencies have the resources to carry them out and without regard to the legal and practical limitations on state agency authority to prevent discrimination in public employment and services—limitations often more stringent than those the state agency faces in dealing with private discrimination. Further, the approach of detecting civil rights violations through state fiscal audits, so highly touted by the then director of ORS when he appeared before this subcommittee two years ago, has turned out to be a complete bust, since almost nothing of value concerning discrimination has been uncovered. In short, ORS has failed to establish relationships with state human rights agencies or other state units which have produced, or even promise to produce, a strong cooperative effort to enforce civil rights requirements.

OTHER ISSUES AFFECTING MINORITIES AND THE POOR

Even if the Office of Revenue Sharing took far more seriously than it does its responsibility to enforce civil rights laws, serious problems of equal treatment under law would remain. Several months ago, spokesmen for the Ford Adminis-

tration told a New York Times reporter that in their view, the urban crisis was over and that measures that might arguably have been required in the 60s were no longer needed. But in the same story, government statistics revealed the growing economic disparity between family income in the central cities and in the suburbs of our nation's large metropolitan areas. And while some minority families have gained sufficient mobility to find suitable housing outside ghetto areas, the racial as well as economic disparities between central cities and suburbs continue to grow. Revenue sharing, I submit, reinforces this continuing and growing urban apartheid by providing "no strings" funding that permits relatively affluent white suburbs to meet their public service needs without contributing anything to the solution of major social and economic problems that afflict the metropolitan area as a whole.

When such a suburban community uses revenue sharing funds to upgrade parks, roads, schools or other services (that may already be superior to those available in central cities) they are obligated under the current law to assure that the services are distributed equally *within* the community. But that may be of no help to a minority family that is effectively barred by zoning practices from residence in the community in the first place.

Prior to the advent of revenue sharing, a number of efforts still in the embryonic stage were being made under categorical programs to induce some degree of cooperation among local jurisdictions in metropolitan areas, e.g., by promoting the concept of "fair share" housing throughout the area, which would also give minorities and lower income people better access to jobs and public services outside ghetto areas. It does not require much empirical study to conclude that once funding is available that provides neither requirements nor incentives to metropolitan cooperation, these fledgling efforts to induce some sense of responsibility will wither and die. That, I believe, is what is happening and what will continue to happen if revenue sharing is continued and expanded in its present form.

RECOMMENDATIONS AND CONCLUSION

In short, Mr. Chairman, it is not an exaggeration to say that under revenue sharing civil rights enforcement has become a disaster area, reinforcing our worst apprehensions that this form of allocating resources and authority would become a vehicle for dissolving hard won federal protections against discrimination. Yet I do not think that conflict is inevitable between measures to expand the resources of states and local governments so that their energies will be more fully utilized in meeting pressing domestic problems and steps to assure that basic national policies, such as equal protection under the law, are fully enforced.

If these objectives are to be reconciled, however, it is clear to us that fundamental reform of the State and Local Fiscal Assistance Act is required. In the civil rights area it has now become clear that if there is to be any hope of fair and vigorous enforcement, the Congress will have to direct the Executive branch to take the steps it has persistently refused to take over the past three years. These include mandated timetables for completion of the investigative and enforcement processes to eliminate the interminable delays that have plagued the program; a specification of the enforcement steps to be utilized where voluntary compliance efforts fail, including the temporary deferral of funds on court or agency findings of discrimination; a requirement that settlement agreements be reduced to writing and be periodically monitored to do away with the vague promises to "do right" that ORS takes such pride in negotiating; mandated agreements with other federal agencies to share the burden of investigation, with provision that the findings of these agencies shall be accepted as the basis for enforcement action.

In addition, it seems to me that minimum steps to arrest the trend toward urban apartheid would include an application to general revenue sharing of the provisions for regional cooperation now attached to categorical programs and the establishment of new financial incentives to induce suburban governments to stop fencing out minorities and the poor and begin doing their share to solve the critical social problems that afflict the nation's cities.

A harder problem is whether even if Congress makes the civil rights mandate more specific it should continue to entrust implementation of that mandate to the Department of Treasury. It has become sadly apparent that Treasury officials, unlike their counterparts in other agencies administering grant programs, view themselves largely as an accounting unit with no policy mission and almost no responsibility to assure any result other than sound fiscal administration. Civil

rights enforcement is regarded as unwarranted interference with the perceived mission of keeping the dollars flowing.

This may be an institutional attitude so ingrained that it will not be materially altered even by stronger direction from Congress. Thus, I believe that Congress may wish to consider whether civil rights may be better protected by a transfer of enforcement functions to an agency such as the Department of Justice that has the needed expertise and that would regard the responsibility as consistent with its major objective.

Mr. Chairman, we are in the midst of a period in which the resolve of this nation to honor the commitments it has made in the Constitution to treat all citizens equally under the law is again being severely tested. As important as any other question we face during this period of testing is whether the Congress of the United States is prepared to assure that general revenue sharing—the largest domestic grant program we have—is administered in a manner that acknowledges the right of blacks and other minorities to equal protection of the laws. It has not been so administered during the past three years, but we hope and believe that Congress will act to set these matters right.

PREPARED STATEMENT OF SUSAN PERRY, SOUTHERN GOVERNMENTAL MONITORING PROJECT, SOUTHERN REGIONAL COUNCIL, ATLANTA, GA.

Good afternoon, Mr. Chairman. My name is Susan Perry. As staff counsel to the Southern Governmental Monitoring Project, I have been asked to testify before your committee this afternoon.

As you know, § 122(a) of the general revenue sharing act¹ prohibits discrimination based on race, color, national origin, or sex in all programs or services receiving entitlement funds. Not until July 24, 1975, did the Office of Revenue Sharing (ORS) finally draft proposed regulations² which defile employment or sex discrimination. However, our experience in investigating the uses of GRS funds and discrimination in the South forces us to conclude that the Act and proposed rules on civil rights requirements must be amended.

Over the past two years, our project has employed researchers in about 60 southern communities to investigate, among other issues, the extent of discrimination in GRS funded programs. The entire report detailing all of our findings on discrimination will be published next month. My remarks today will highlight some of our major findings.

INVESTIGATION HAS CONSISTENTLY REVEALED THE INADEQUACY OF ORS' ANTIDISCRIMINATION ENFORCEMENT UNDER THE PRESENT STATUTORY AND ADMINISTRATIVE SCHEME

A primary congressional purpose for enacting revenue sharing legislation was to promote greater flexibility in the use of federal funds at the local level.³ But this policy may have created an inherent conflict with effective civil rights enforcement—particularly in the South where federal intervention has historically been a decisive factor in anti-discrimination compliance.

SGMP investigations support the charge that ORS has been unconscionably derelict in performing its administrative enforcement duties mandated by the statute. As a result of the discriminatory conduct of recipient governments coupled with the lack of effective enforcement by ORS, black and poor southerners continue to be denied equal access to critical programs and services sponsored by jurisdictions receiving revenue sharing funds.

EMPLOYMENT PATTERNS OF A SUBSTANTIAL PERCENTAGE OF JURISDICTIONS AND LOCAL AGENCIES SURVEYED REFLECT A CONTINUING BIAS AGAINST HIRING TRADITIONALLY EXCLUDED GROUPS IN PROGRAMS RECEIVING REVENUE SHARING FUNDS

SGMP surveys disclose that women and minorities were significantly under-represented in public employment, particularly in the public safety departments of many communities. This underrepresentation was the basis for citizens filing non-compliance complaints with ORS in several survey locations.

In Jacksonville, Florida, where blacks constituted 26.5 percent of the total population but representation in the Office of the Sheriff amounted to no black women on the force, black men 5 percent, white women 2 percent, and white men

¹ State and Local Fiscal Assistance Act of 1972.

² 40 Federal Register 30974.

³ See H.R. Rep. No. 1018, 92d Cong., 2d Sess., pt. 1, at 9, 11 (1972).

93 percent,⁴ the local chapter of the NAACP filed a complaint with ORS alleging blatant employment discrimination against women and blacks. Ms. Eddie Mae Steward, the President of that group is here with me this afternoon to discuss the Jacksonville complaint.

City officials in another SGMP monitoring site, New Bern, North Carolina, were charged with alleged discrimination in the allocation of revenue sharing funds used to construct two recreational centers which would have the effect of perpetuating a discriminatory pattern of dual service. As a result of this complaint, evidence revealed that the town also maintained a lily white fire department despite a black population of 8,968. ORS ordered New Bern to develop an affirmative action plan that would make the all-white fire department reflective of the minority population.

Our SGMP investigator in Spartanburg, South Carolina interviewed feminists who charged the city with discriminatory hiring, firing, promotion and compensation.

A review of the disposition of the Spartanburg complaint demonstrates the inadequacy of ORS procedures for the speedy resolution of allegations of discrimination. Four months after an ORS program audit in December, 1974, turned up evidence of probable civil rights violations, ORS' only enforcement activity consisted of sending a notification of non-compliance to the city. In May, 1975, a SGMP staff person contacted the ORS Compliance Manager who candidly admitted that the initial findings of the auditor had never been turned over to the civil rights unit because there was no standard agency procedure requiring such reporting. Compliance Manager Murphy gave assurances that this "bug in the system" would be corrected. Yet nearly one year after the ORS compliance mechanism was triggered, the Spartanburg complaint has grown stale in the ORS investigative stages.

In Spartanburg and other communities, affirmative action plans have been drafted to satisfy compliance requirements. Because these reluctantly prepared employment plans are not self-executing, the documents amount to mere paper commitments in the absence of rigorous enforcement by outside agencies to compel compliance.

FAILURE OF ENFORCEMENT AGENCIES TO EFFECTIVELY MONITOR CONTRACTOR EMPLOYMENT CAN HAVE A DETRIMENTAL IMPACT ON WOMEN AND MINORITIES SEEKING EMPLOYMENT IN THE SKILLED CONSTRUCTION TRADES

In Asheville and Buncombe County, North Carolina, and in many other survey locations, government officials diverted major portions of revenue sharing dollars into what Asheville's Chief Finance Officer described as "highly visible, one time capital outlays."⁵ Under the existing revenue sharing statute and § 51.51 of the proposed non-discrimination regulations, discrimination by private contractors receiving entitlement funds is prohibited. In communities like Asheville where the prevailing wage rate is low and the recession has produced a reservoir of cheap labor, rigorous compliance take on added significance for women and minorities. However, overlapping agency jurisdiction in enforcing minimum wage rate standards and minority and female enrollment in apprenticeship programs creates convenient loopholes for contractors interested in evading compliance.

North Carolina contractor regulation is provided under a confusing bifurcated system of state and federal regulation. Despite federal law⁶ requiring recipient governments to monitor weekly wage reports filed by contractors, the Asheville mayor thought, that the city's compliance obligations consisted of inserting a clause in municipal agreements which indicated that the contract was subject to Davis-Bacon requirements.⁷ The Wage and Hour Division of the U.S. Department of Labor receives no direct report unless an alleged violation occurs and an investigation is requested by an aggrieved party.

Similarly, this lack of effective enforcement can encourage North Carolina contractors to engage in deceptive apprenticeship programs to avoid paying legal, minimum wages to those classes of persons intended to benefit from affirmative action policies. The Department of Labor has delegated apprentice program registration to the State. As of August 19, 1975, 143 Buncombe County apprentice programs were registered listing 38 minority apprentices enrolled in ap-

⁴ "Toward Police/Community Detente in Jacksonville," a report of the Florida Advisory Committee on Civil Rights prepared for the Commission, June 1975, at 10.

⁵ Interview by SGMP investigator Tom Sullivan, summer 1975.

⁶ 29 Code of Federal Regulation § 8.3.

⁷ Interview with Mayor Richard Wood by Tom Sullivan.

proved programs. No minority apprentices were enrolled in the 10 programs specifically designated as having affirmative action recruitment plans.⁹ A sham apprenticeship registration can allow contractors to hire women and minority workers at substandard wages without furnishing the necessary skills training. By maintaining an appearance of minimal compliance on paper, local contractors may succeed in by-passing the state and federal enforcement mechanisms.

Section 51.53(c) obligates recipient governments "to conduct a continuing program of self-evaluation" in order to identify policies and practices which have "the effect of denying equal employment opportunities to minority individuals or women." Recipient governments are notified in § 51.53(b) that ORS also "intends to schedule compliance reviews by giving priority to jurisdictions which show a significant disparity between the percentage of minority persons in the work force and the percentage of minority persons employed in applicable programs." However, we are convinced that unless periodic compliance reviews are mandated by law and carried out by a diligent enforcement agency, contractors in violation of affirmative action requirements will remain undetected.

In the time remaining I would like to list some of our major recommendations for the committee.

CITIZENS' ACCESS TO COMPLIANCE INFORMATION SHOULD BE EXPLICITLY PROVIDED

Evidence indicates that a large number of recipient governments are probably in violation of anti-discrimination requirements, but relatively few complaints are filed with ORS. Not many citizens interviewed by SGMP researchers had sophisticated knowledge of revenue sharing and the program's requirements.

In Raleigh, North Carolina, for example, black members of the GRS funded police and fire departments filed more than a dozen complaints with the EEOC. These complaints have been stalled in EEOC proceedings for about one year. Ignorant of their rights under revenue sharing laws, complainants have ignored the ORS route to pursue their discrimination charges.

As EEOC's work load becomes increasingly unwieldy and as discrimination complaints remain unresolved, revenue sharing civil rights procedures could become an effective method for policing a significant number of employment discrimination cases. Accordingly, we urge more effective procedures to insure citizens' accessibility to GRS funding and compliance information as well as available non-discrimination remedies.

REVENUE SHARING LEGISLATION SHOULD BE AMENDED TO INCLUDE A PERMISSIBLE EXPENSE CATEGORY TO PAY FOR THE DEVELOPMENT OF AFFIRMATIVE ACTION PROGRAMS

ORS has determined that the funding of affirmative action programs must be treated as an operating expense rather than a capital expenditure.¹⁰ This means that revenue sharing money can now be used for affirmative action programs only in those program areas eligible for revenue sharing funds under the present "priority" operating expenditure categories, such as public safety or environmental protection. To aid local governments in their compliance efforts, an additional expense category to fund affirmative action must be enacted.

IN LIGHT OF THE SUPREME COURT DECISION IN THE ALASKA PIPELINE CASE,¹⁰ A PRIVATE RIGHT OF ACTION MUST BE ACCOMPANIED BY AN AUTHORIZATION TO AWARD LEGAL FEES AGAINST NON-COMPLYING GOVERNMENTS

Limitation in enforcement agency manpower requires that private suits be recognized as a remedy against discrimination. Because the Supreme Court has refused to invade what it considers the "legislature's province by redistributing litigation costs," legislation must be enacted which would explicitly authorize the courts to award attorneys' fees to successful litigants.¹¹ Revenue sharing funds of the non-complying recipient governments could be the source for these fees.

⁹ See letter from Ms. Mignon Harden, Assistant Director, Apprenticeship Division, North Carolina Department of Labor, to Tom Sullivan, dated August 19, 1975.

¹⁰ See memorandum on affirmative action from Robert T. Murphy, ORS Compliance Manager, August 1, 1975.

¹¹ See *Alaska Pipeline Service Co. v. Wilderness Society*, 43 U.S.L.W. 4561 (May 12, 1975).

¹² *Id.* at 4571.

AN EFFECTIVE AND EFFICIENT ENFORCEMENT SCHEME MUST EXTEND CIVIL RIGHTS COVERAGE TO ALL PROGRAMS AND ACTIVITIES OF A RECIPIENT GOVERNMENT

Revenue sharing funds often pay for municipal services that otherwise would have been financed from the general local budget. Local funds which are freed up by revenue sharing may in turn be allocated in such a way as to avoid civil rights requirements. SGMP's New Orleans investigation encountered a potential example for this shifting of accounts: in that city, officials frankly stated that for accounting purposes, they were attempting to place GRS funds not in such slightly integrated departments as the police, but in "safe" departments such as sanitation—"safe" because better integrated.

Furthermore, some local governments still make very little effort to document their uses of GRS funds. In Alachua County, Florida, our SGMP investigators found no reliable financial data on uses of GRS funds. County officials claimed that a high percentage of GRS funds went to social services, but when confronted with a request to document this claim, they admitted that there was indeed no way to do so.

We reiterate the recommendation for jurisdiction-wide coverage which was made by Elmer Staats, Comptroller General of the United States, in recent testimony before a Senate subcommittee,¹² and which we included in our formal comments on the proposed ORS anti-discrimination regulations.

AFTER CERTAIN FINDINGS HAVE BEEN MADE, THE REGULATORY SCHEME SHOULD PROVIDE FOR AUTOMATIC SUSPENSION OF ENTITLEMENT FUNDS

After a determination by Federal enforcement agents of probable discrimination and failure to secure voluntary compliance, revenue sharing funds to recipient governments should be withheld, pending further investigation and complete compliance. Similarly, a procedure for mandatory deferral of payments of non-complying recipients, made prior to suits alleging violations of § 122, would immediately shift the burden of accelerating enforcement proceedings to local governments, and would give them a financial interest in the speedy resolution of complaints.

INDIVIDUALS FILING EMPLOYMENT DISCRIMINATION COMPLAINTS MUST BE SHIELDED FROM RETALIATORY DISMISSAL AND OTHER REPRISALS

The present enforcement structure offers no protection to employees who complain about job discrimination. SGMP investigators in New Bern, North Carolina, uncovered evidence that in small communities where the political structure is closely tied with local business, black citizens who complain about governmental discrimination fear job reprisals from white employers. Anti-retaliation provisions must be drafted to protect publicly employed complainants from threats of job termination. Non-civil-servant complainants can be protected somewhat by enacting a requirement that the enforcement agency maintain strict confidentiality of sources of discrimination information.

ORS SHOULD CONTINUE ITS STATUTORY RESPONSIBILITIES ON SUBSTANTIVE REVENUE SHARING MATTERS, BUT CIVIL RIGHTS ENFORCEMENT SHOULD BE SEVERED FROM ORS AND TRANSFERRED TO THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF JUSTICE

Even if all of the necessary enforcement modifications are enacted, the five ORS compliance staff members exclusively assigned "to monitor the non-discrimination requirements in a grant program running to more than 38,000 jurisdictions"¹³ cannot be effective.

Overlapping agency responsibilities produce confusion and proliferation of civil rights enforcement in various federal departments. An example of this conflict in agency jurisdiction was provided by the Justice Department official who candidly told us that his department takes a "hands off" approach to discrimination complaints which have been previously filed with ORS unless that agency requests assistance. ORS has a similar policy for complaints that reach the Justice Department first. From the point of view of prospective complainants, the resulting enforcement agency shopping (at least for those who learn about

¹² See statement of Elmer Staats, Comptroller General of the United States, before the Subcommittee on Intergovernmental Relations on Government Operations, and accompanying GAO report, *Case Studies of Revenue Sharing in 26 Local Governments*, July 23, 1975.

¹³ "Revenue and Rights," *New York Times*, August 10, 1975.

this peculiar informal arrangement between the Justice Department and ORS), like the old shell game, means being lucky enough to select an effective enforcement program.

Because the Treasury Department is not equipped by tradition or training to enforce civil rights requirements, we recommend that all responsibility for civil rights enforcement, other than routine information gathering and dissemination, be removed entirely from ORS and transferred to the Civil Rights Division of the Justice Department. We also recommend that the Justice Department receive additional funds for staff and investigation expenses to carry out this responsibility.

STATEMENT OF EDDIE MAE STEWARD, PRESIDENT, NAACP, JACKSONVILLE, FLORIDA

Good afternoon, Mr. Chairman.

On July 20, 1975, as President of the Jacksonville branch of the NAACP, I filed a complaint with the Office of Revenue Sharing against the city of Jacksonville, alleging discrimination in public employment in the police and fire departments, and inequities in the establishment and maintenance of recreational facilities. Before I begin to discuss these allegations, I would like to provide some background information to explain the events that led up to my filing that charge against the city.

The political climate in Jacksonville, which is located in northern Florida on the Atlantic coast, has been described as more similar to conservative south Georgia than to other sections of Florida.

In 1967, a referendum extended Jacksonville's city limits to take in most of Duval County and a large white population. This diluted the voting power of blacks. We represented 47.7% of the population within the old city boundaries, as opposed to 26.6% of the total population (about one-half million) under the new boundaries.¹

In size, the consolidated government is one of the largest municipalities in the country, measuring 840 square miles.² I might add that in a city of this size it is not difficult to locate public facilities in remote areas which are totally inaccessible to poor, black inner-city residents.

Police salaries have been one of the chief uses of GRS money in Jacksonville. But blacks and women have serious problems with discrimination in Jacksonville's police services.

Until 1968 the Jacksonville police department was segregated, and "nigra" officers, as they were called, were posted in an all-black substation.³ Traditionally these men were not empowered to arrest whites for any reason.⁴ Prior to consolidation there were no uniformed black deputies under the county sheriff, and no blacks were members of the Fraternal Order of Police.

There are two personnel categories, sworn and civilian, in the Office of the Sheriff (OS), which is now the police department for the entire consolidated government. The sworn force is composed of uniformed officers, detectives and support staff. The administrative, records and county correctional staffs represent the civil component.

In January, 1969, one year after consolidation, 39 officers or 6.4% of the 609-member sworn staff were black.⁵ Seven of these blacks were in supervisory positions, but no black women were on the force.⁶ By July, 1974, the OS had a total of 1,290 employees; 92% or 1,184 were white.⁷ The racial breakdown on the OS sworn staff, which had now increased to 848 persons, was as follows: 786 (93%) white men; 19 (2%) white women; and 43 (5%) black men.⁸ There still was not one black woman on the sworn staff, although black women were overrepresented in the lower-paying civilian positions.⁹ Of the 442 civilian employees, 252 or 52% were white men, and 127 or 29% were white women.¹⁰ Only 41 or 9 percent of these staff persons were black men and 22 or 5 percent were black women.¹¹

¹ "Toward Police/Community Detente in Jacksonville," a report of the Florida Advisory Committee on Civil Rights prepared for the Commission, June, 1975, at 3; hereinafter *The Report*.

² "Data Jacksonville, Florida," published by the Research Department of the Jacksonville Area Chamber of Commerce, October, 1974.

³ *The Report* at 5.

⁴ *Id.*

⁵ *Id.* at 10.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 11.

¹⁰ *Id.* at 10.

¹¹ *Id.* at 11.

The racial composition of the OS staff had serious implications for black residents of the city. On March 12, 1974, the Jacksonville NAACP and other plaintiffs filed a class action lawsuit to protect the constitutional rights of blacks. Top city officials such as Sheriff Dale Carsen and Mayor Hans Tausler as well as 22 individual Jacksonville policemen were named as defendants. The allegations against these defendants included misconduct, abuse of authority, and use of excessive force and brutality. This case is still in litigation.

Meanwhile, other agencies had also focused attention on the OS. In September, 1974, the OS instituted an agility test for prospective police academy candidates; this test replaced a height requirement.¹² The Equal Employment Opportunity Commission brought proceedings against the OS and ordered the test eliminated as a criterion for selection.¹³ The OS, which was also ordered to hire 41.4% women in all job categories, is appealing this ruling.¹⁴ There are also allegations that 3 women were recently denied acceptance into the Police Reserves, which does not receive Federal funds.¹⁵ However, the Reserves do use the Police Academy, which is federally funded, and I suspect another lawsuit may be in the making.

In June, 1975, the Florida Advisory Committee to the United States Commission on Civil Rights prepared a report of its study of police/community relations in Jacksonville. The Committee made several specific findings with regard to OS staffing. Evidence revealed that "blacks and women comprise disproportionately small percentages of the OS sworn force and are underrepresented in higher officer ranks in the OS."¹⁶ The Committee also found "techniques currently used for recruiting minorities and women are ineffectual."¹⁷ Staffing patterns, according to the Committee, indicate that "police recruit screening and hiring practices and tests for promoting tend to discriminate against minorities and women."¹⁸ The Committee also found that although Jacksonville has received more than \$3 million in grants under the Omnibus Crime Control and Safe Streets Act, the OS, which administers the funds, has not met the hiring, promotion and staffing requirements of the legislation.¹⁹ Until a bona fide affirmative action plan for hiring and promoting minorities is implemented, the Committee recommended that the Civil Rights officer of the Law Enforcement Assistance Administration withhold further funds from the OS.²⁰ City officials were quick to respond to the Committee's findings and recommendations. Newspaper reports quoted Police Services Director John Riley Smith as stating that the OS would not be coerced into hiring persons who are not qualified.²¹ City Councilman John Goode, a former chief in the OS and the chairman of the Council's public safety and judiciary committee, was also interviewed about this report. Goode told one reporter that he had "seen no evidence of discrimination," and objected to any attempts to withhold LEAA funds because of hiring practices.²² Goode was also quoted as saying: "It looks like they are using federal tax money in a coercive manner."²³

Now I would like to give the Committee some background information on revenue sharing in Jacksonville. Until consolidation in 1968, Jacksonville had not sought federal funding. Many believe, as I do, that the city's foot-dragging was an attempt to avoid the civil rights requirements often tied to federal grants. However, revenue sharing has provided (including accrued interest) approximately \$36 million to the city, at an average of \$10 million per year. The bulk of the revenue sharing funds were used for two purposes: sewers and police and fire salaries.²⁴ According to City Auditor Gene McCleod, over \$15.5 million in revenue sharing money was spent on police and fire salaries.²⁵

¹² "Police Agility Test Unfair to Women," Jacksonville Journal, June 16, 1975.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Interview by SGMP intern Nancy Ebe with Nancy Webman, Jacksonville Journal reporter, summer, 1975.

¹⁶ The Report at 51.

¹⁷ *Id.*

¹⁸ *Id.* at 52.

¹⁹ *Id.* at 55.

²⁰ *Id.* at 56.

²¹ G. Sease, "Rights Unit Asks Sheriff Funds Cutoff," Florida Times-Union, July 10, 1975.

²² "Advisory Group's Police Study Labeled 'Un-American'," Florida Times-Union, July 11, 1975.

²³ *Id.*

²⁴ "City of Jacksonville, Florida Financial Summary, 1974-75," published by the Information Service Division, Department of Central Services, city of Jacksonville, January, 1975.

²⁵ Interview with Nancy Ebe, summer, 1975.

Revenue Sharing money was also used to pay for another controversial project. In 1973, Mayor Hans Tanzler requested the City Council to allocate \$3 million for recreation. This proposal included, among other allocations, \$700,000 for the construction of a senior citizens' center, \$200,000 for facilities at Tree Hill, \$425,000 for swimming pools, \$120,000 for tennis courts, and \$1 million for Kathryn Abby Hanna park.²⁶ Council members of the agriculture, recreation and public affairs committees criticized the recommendations as "political" and stated that they didn't "meet longstanding needs."²⁷ Furthermore, the Jacksonville Area Planning Board staff recommended against funding the senior citizens center and Tree Hill.²⁸

I was one of the members of a delegation of various civic and religious groups, representing the black and low income citizens, that met with the Mayor to request a reduction in the \$3 million recreation proposal. We told the Mayor that recreation was still a luxury for people whose vital needs had not been met. We urged that at least \$1 million of the revenue sharing money be allocated for social services. Nevertheless, the city appropriated over \$43,000 of revenue sharing monies for work on Hanna and Arlington Parks as well as other recreation allocations. The black community is particularly enraged over the City Council's approval of expenditures for these two parks, which are both located in the upper-middle-class Southside area, a beach community that is totally inaccessible to poor blacks. The Mayor and Council had an opportunity to improve the recreational deficiencies in the poor black section of Northwest Jacksonville by purchasing the Brentwood Golf Course, which could have served as a recreational complex in that area. Despite campaign pledges to the contrary, Mayor Tanzler vetoed the purchase of the Brentwood facility.

Because we believe that revenue sharing dollars are being spent in a discriminatory manner, we filed a complaint with ORS. We alleged that the GRS-funded recreation projects will not aid the cultural development of all citizens—especially blacks and poor whites, since the recreation sites are more than 20 miles from the core or inner city where most poor whites and black citizens live. Further, these sites are not accessible to those persons who cannot afford private transportation, since no public transportation is available to get there.

We pointed out that the ORS, which also received revenue sharing funds, has consistently and blatantly discriminated against women and blacks. We sent ORS a copy of the Advisory Committee report referred to earlier.

In the three months since that complaint was filed, ORS has not, to my knowledge, taken any action. Gentlemen, I have only one comment to make on ORS's enforcement system: how much evidence of discrimination does this agency need before it will take affirmative steps to enforce the civil rights laws in this country.

STATEMENT OF SARAH SHORT AUSTIN, VICE PRESIDENT, NATIONAL URBAN COALITION

Mr. Chairman: My name is Sarah Austin, vice president of the National Urban Coalition, and field director of our local coalition division, which has monitored the effects of general revenue sharing over the past two years in the ten coalition cities of Pittsfield, Wilmington, Bridgeport, Detroit, St. Paul, Oakland, Minneapolis, Pasadena, Racine and Baltimore. Therefore, I welcome this opportunity to address you on an issue of such concern and relevance to those whom I represent. For in this time of our urban fiscal uncertainty, the quality and even the fabric of urban life is greatly dependent upon the priorities you define here.

The steering committee of the National Urban Coalition in its fall meeting last week engaged in a long and intensive debate on general revenue sharing. Our board concluded that it would only support an amended general revenue sharing program which particularly focuses on two of the present inequities in the way the law operates in regard to minorities. One is the inadequate need formula which fails to take into account the disproportionate burden of cities which have a high percentage of poor unemployed and under employed minorities. And a second is a weak and sometimes non-existent enforcement of civil rights guarantees in the allocation of general revenue sharing funds.

²⁶ "Mayor's Park Package Rapped by Committee," Times-Union, May 1, 1973.

²⁷ *Id.*

²⁸ *Id.*

Not everyone will be able to bring law suits to assure that jurisdictions do not discriminate in hiring and promotion with the use of federal funds. Not everyone will be able to go to court and seek to make certain that some of the general revenue sharing funds are not used to abate water and sewer taxes while ignoring the social needs of the poor as in the Atlanta case.

We are opposed to the notion that a seriously understaffed Office of Revenue Sharing can do the kind of monitoring that is required in the face of the widespread tendency to see these funds as "magic money" left on a stump, miraculously exempt from the supposedly well established principle that all tax dollars must be subject to equal citizenship requirements.

It ought to be possible, at one and the same time, to give to hard-pressed cities the fiscal relief they deserve without having to junk the Constitution in the process.

Another time around, it would be our hope that our St. Paul coalition would not have to spend endless hours and energy attempting to make sure that federal funds going to the local police department would finally result in the hiring of one black policeman.

It is in order to give you the benefit of our experiences in these cities that I would like to mention the results of the joint GRS monitoring project the National Urban Coalition sponsored in conjunction with its local affiliates and the other members of this panel. Our basic and most instructive finding was that in this time of unacceptably high national unemployment, GRS funds are actively "financing widespread discrimination in public employment and local services." Moreover, in spite of the specific legislative provisions against discriminatory hiring practices written into *The State and Local Fiscal Assistance Act* (Sec. 122 [a] and [51.41]), our study has found a "nationwide pattern of underrepresentation of minorities and women" in state and local governmental agencies and programs.

The Treasury Department's office of general revenue sharing has documented statistics which indicate that most cities are using their GRS funds for police and fire protection. It is, therefore, all the more significant that our GRS monitoring project has found systematic discrimination in hiring practices in these very agencies. For example, among firefighters, 95% of employees are white and male, while only 3% are black, and 1.3% female. Police force statistics are equally instructive. 91% of the force is white and male, 6.3% is black and 12% female.¹ In the area of salaries and job classification, women and minorities suffered the same type of systematic relegation to lower level positions and payments.

The recent Bureau of Labor statistics September figure on the national unemployment rate of black males and of black women is 12.1%, while the national rate is 8.3%. This presents a tragic demonstration of the accuracy of our findings.

It is instructive to cite here some examples of what our local coalition monitors have discovered. For instance, in Pittsfield, Massachusetts, according to the latest actual use report, the greatest segment of GRS money was spent in the area of public safety. Yet, of the 102 policemen on the force, only one is black. There are no black firemen. It is clear that the office of revenue sharing has failed to inform Pittsfield officials of the affirmative action obligation which are part and parcel of the revenue sharing legislation. The record of Baltimore, Maryland is only slightly better. Of the \$33 million received this last fiscal year in revenue sharing funds, ninety percent went to public safety. However, while blacks and minorities make up 46% of the Baltimore population, they represent only 14% of those employed in the public safety areas of police and fire protection. Finally, the example of St. Paul, Minnesota is most revealing of the negligence of the office of revenue sharing in the area of equal opportunity employment. For, although this city received in fiscal year '74, over five and one half million dollars in revenue sharing funds, and spent over five million of these dollars for public safety, only 4 percent of the total fire and police force are black. When this was brought to the attention of GRS by our local coalition in St. Paul, the administrative remedy of fund deferral was refused. Thus, the dual conclusion of our study, *Equal Opportunity Under General Revenue Sharing*, that recipient governments have been only minimally informed of their civil rights obligation under GRS, and that the office of revenue sharing has only rarely enforced these obligations through deferral funds is provided dramatic proof by these examples.

M. Carl Holman, president of the National Urban Coalition, testified before

¹ Equal Employment Opportunity Commission: *Minorities and Women in State and Local Government, 1973*, vol. 1, as cited in *Equal Opportunity Under General Revenue Sharing*, August, 1975, p. 7, table 1.

the House Subcommittee on Intergovernmental Relations in June, 1974. At that time, he stated that although the GRS concept promised badly needed assistance to the fiscally depressed cities, the deficiencies of the program have "made the phrase 'returning the power to the people' a mockery for the poor, minorities and the working class residents of our cities." This statement, is, unfortunately, equally true one year later for only a small fraction of revenue sharing monies fund social service programs in the cities and thus penalizes the minorities and the poor who are dependent on these services.

In our local coalition city of Pasadena, California, GRS funds, particularly after the first year, have for the most part been put into the general operating budget. About one-half of first year funds went for public safety (police) with the remainder distributed among the other seven operating and maintenance categories of spending. From the total GRS funds received by the city of Pasadena, \$2,240,258, only \$45,858—4.1%—was allocated for social services.

Bridgeport: GRS funds went into the general budget and no plans were made for their use. This use of funds made property tax reduction possible. Of \$8,362,931 in GRS funds, Bridgeport allocated \$188,703 (4.2%) for human needs.

Detroit: Detroit has received approximately \$90 million in revenue sharing per year. Yet this is a small portion of the total city revenues and has been useful only in holding the line against inflation. In addition, a report prepared for the city of New Detroit, Inc., reveals that Detroit is being badly hurt by cut-backs in Federal categorical funds. GRS receipts are not sufficient to cover the cuts—and are not being used for that purpose anyway.

Minneapolis: According to actual use reports, Minneapolis has spent its GRS funds for a number of programs and categories, primarily operating and maintenance expenses. Social services received over \$1 million of the first \$5 million allocation, but the city's social services department which supposedly received these funds was unfamiliar with the mechanics of GRS. Apparently, the funds were put into the general budget and used to supplement normal revenues and offset inflation. The city policy seemed to favor combining GRS funds with overall city revenue.

These examples highlight the broad consensus among NUC and its local affiliates that the civil rights aspects of GRS encompass broader considerations than affirmative action alone. Four other categories are equally important in their impact on urban residents and minorities. Of prime significance is the fact that with population an important factor in allocating GRS funds, jurisdictions reaching the 145% ceiling lose a full per capita share for every person not counted in the census figures. Despite the general acknowledgement that blacks are significantly undercounted, the office of revenue sharing has not made allowances in data to compensate for such omissions. In fact, in 1973, the Census Bureau estimated they missed 1,880,000 blacks in the 1970 census count. This is four times the undercount for whites.* And, while there is no "acknowledged" census undercount rate for Spanish surnames, it is widely recognized that the American Latino community is consistently under represented in the census. Thus, areas with large concentrations of blacks and Latinos are losing important amounts of GRS funds, and, no administrative remedy is yet in sight.

Secondly, the 145% ceiling mitigates against urban areas and minorities in a very clear way. To cite a few examples: (A) Because of the 145% ceiling, Wilmington, Delaware will receive only 65% of the funds to which it is entitled; (B) Baltimore has also been penalized by the 145% ceiling on local entitlements. Thus the city receives \$27 million rather than \$36 million in GRS funds per year; and (C) in Detroit, the 145% allocation limit means that the city will lose \$34 million in GRS funds over its 5 year participation.

In 1974, states were receiving roughly one third of the GRS funds, with the other two thirds parcelled out to thousands of counties, cities and smaller jurisdictions and sub-jurisdictions. Some States and some of the wealthier smaller jurisdictions were running surpluses while many cities were battling deficits. While the recession may have changed this picture somewhat for the calendar year 1975, it seems to us that some better means of achieving equity should be considered.

Thirdly, it is now commonplace to acknowledge that GRS funds have tended to replace and not to supplement the categorical grant programs as originally intended. In fact, many of these special categorical programs have been cut

* U.S. Department of Commerce, 1973. "Census Bureau Report on 1970 Census Coverage", in *Commerce News*, April 25, 1973.

back or even eliminated upon the advent of general revenue sharing. According to reported use data collected by the office of general revenue sharing for fiscal 1974, only about 7% of GRS funds go to social services. The way this discriminates against minorities has been clearly illustrated in the recently published study "General Revenue Sharing in 97 Cities in Southern California." Researchers from the University of California, Riverside, found that "cities with large black populations benefited more from categorical grants than from revenue sharing."³ This historical fact must be taken into consideration when reviewing not only the formula but the administrative process of general revenue sharing in the future.

Lastly, the lack of accountability has freed local officials from the sometimes unpopular necessity of funding programs which specifically benefit disadvantaged segments of the population. Our local coalition in Bridgeport, Connecticut has reported that the local civil service commission has no affirmative action program and that since GRS funds are included in the general budgetary process these funds are totally lost from any accountability. The charter revision commission, a city appointed commission, is currently studying general budgetary reform, in order to correct this abuse. On August 20 of this year, Mr. Holman stated, "the purpose of revenue sharing was supposed to bring the government closer to the people, but instead it has become a means to pass money from federal bureaucrats to local bureaucrats." We suggest that in your review of the GRS process you incorporate administrative reforms which will protect the integrity of GRS funds.

In conclusion, we feel a reordering of the priorities of general revenue sharing is clearly needed. We would suggest that the Subcommittee on Civil and Constitutional Rights seriously consider correcting the inequities which mitigate against the needs of 70 per cent of our population; that is those people living in urban areas, who rely on your help to devise effective and equitable solutions to the problems they face.

I thank you for this opportunity to appear before the committee.

STATEMENT OF ALICE KINKEAD, DIRECTOR, HUMAN RESOURCES DEPARTMENT OF THE
LEAGUE OF WOMEN VOTERS EDUCATION FUND

Mr. Chairman and members of the Committee:

My name is Alice Kinkead and I am Director of the Human Resources Department of the League of Women Voters Education Fund. The League of Women Voters is a nationwide organization representing over 1300 constituent Leagues and 140,000 members. On behalf of the League, I thank you for inviting me to testify on the civil rights aspects of general revenue sharing. Pablo Eisenberg, Director of the Center for Community Change, who is not testifying here today, has asked me to convey to you his organization's full endorsement of the League's testimony.

Two years ago, the League of Women Voters Education Fund joined with three other national organizations, the Center for Community Change, the Center for National Policy Review, and the National Urban Coalition, in establishing the National Revenue Sharing Project. Its objective has been to assess the impact of the General Revenue Sharing Act's reallocation of authority and resources upon the needs of less advantaged citizens and upon efforts to assure that minorities and women receive equal treatment.

Beginning in November 1973, the Project undertook a massive monitoring effort on local, state and federal levels. Approximately 53 local and six state affiliates of the Project's sponsoring organizations were involved in monitoring the implementation of general revenue sharing.

The League conducted the state-level monitoring in six states: California, Iowa, Massachusetts, Michigan, Tennessee, and Texas. One hundred twenty League members, trained and supervised by professional staff, used a monitoring instrument developed with the help of the Joint Center for Urban Affairs of Harvard-MIT. These field workers conducted over 300 interviews with elected officials, department heads, media representatives, and community organization leaders in the six states. Monitors also collected extensive demographic information, relevant studies, reports, newspaper clippings, and budget docu-

³ "The Effects of General Revenue Sharing on Ninety-seven Cities in Southern California." in *General Revenue Sharing*, research utilization project, vol. II, National Science Foundation, September, 1975, p. 81-96.

ments to help them evaluate the performance of the states in administering GRS funds. The gathered data, monitors' evaluations, and interviews were then assembled for comprehensive analysis by the League of Woman Voters Education Fund national Project staff.

The findings have now been published in a volume titled *General Revenue Sharing and the States*—the first major report to be made on the state's compliance with GRS law and regulations, as they spent over one billion dollars of the GRS funds exported to them from Washington between October 20, 1972, and June 30, 1974.

Because much has already been researched and reported about local governments' performance and so remarkably little about the states'—although one dollar in every three of GRS money passes through their hands—I wish to give you a somewhat detailed "report card" on the six states studied. My facts are drawn from the report just mentioned. My focus is on civil rights compliance, specifically in employment.

Monitors found some gaps in state compliance, both with the spirit of the law and the letter of the regulations. While their findings do not necessarily indicate a total lack of concern about civil rights, they do point to some serious sins of omission in enforcement.

Confusion about, or lack of commitment to, the civil rights requirements of the law appeared to be the norm in the six monitored states. The questions boil down this way: Can the federal government "pass through," along with the money, its responsibility for seeing that federal dollars are spent in a nondiscriminatory way—a responsibility mandated by more than this single law? Is it reasonable to assume that states will police themselves? Who is ultimately responsible for enforcing Section 122? Is Section 122, in fact, enforceable?

ONE PROBLEM: IMPOTENT ENFORCEMENT AGENCIES

The State and Local Fiscal Assistance Act directs the Department of the Treasury to ensure enforcement of the provision of Section 122. Treasury issued regulations to this end: by default, enforcement of state compliance with Section 122 fell to the states themselves. How are they executing this added responsibility?

The answer is, not very well, even when the will exists—and it doesn't always. States, stuck with assigning a fox to watch the chicken coop, usually left the job to an existing state compliance agency. And those agencies have had three problems: no power, no money—which means no staff—and no help from the feds. The task has been a huge postscript added to the job description of agencies often already underfunded and overburdened. The level to civil rights enforcement has varied from state to state as these factors came into play.

IN TEXAS

The Governor's Office of Equal Employment Opportunity in Texas, now eager to take a forward step, is strapped by a yearly budget of 25,000, a staff of eighteen partly borrowed from the Governor's budget, and a lack of authority. It cannot issue cease-and-desist orders, initiate court action, or impose fines for violations. This office has only two options: to ask the attorney general to file suit against agencies that refuse to file affirmative action plans, or to ask the Governor to cut off agency funds. Neither is currently a likely recourse given the lack of aggressive support provided to the Office of Equal Employment Opportunity to date.

IN IOWA

Texas isn't the only state where civil rights agencies are understaffed, underfunded, and underpowered. The Iowa Civil Rights Commission primarily uses conciliation to resolve complaints. It can issue cease-and-desist orders, but rarely does. Court action is not an effective option, because the commission has no subpoena power.

Moreover, it is hard to identify discrimination problems in Iowa, since the commission treats this kind of information as confidential. Monitors were told that there had been discrimination complaints filed against the state, but in the last three years none have reached the hearing stage of resolution. A review of summarized state employment data shows that Iowa has problems in employment practices that may warrant a charge of discrimination on the basis of sex and possibly on the basis of race as well. For example, the average male salary is

\$2,750 more than the average female salary. White men earn an average salary that is \$2,770 more than white women; whites average close to \$1,000 more per year than blacks.

There are additional disparities in terms of earning power. While 35.1% of the total number of males earn less than \$8,000, 75.6% of the total number of females fall into this category. Similarly, 65.5% of the total number of blacks earn less than \$8,000, with 51.3% of the total number of whites in the same category.

As of June 1974 no revenue sharing money was reported as having gone directly into the state agencies covered by these statistics; nonetheless, it is clear that \$32 million allocated to education supplanted an almost identical amount of money from the General Fund. One must conclude, then, that in truth revenue sharing dollars found their way into numerous state agencies which continue to discriminate in employment. Even assuming vigorous civil rights enforcement, the fungibility factor makes real compliance an illusion—short of 100% non-discrimination in all state employment.

IN CALIFORNIA

California's Fair Employment Practices Division, charged with eliminating discrimination in housing and employment, is another example. It is typically understaffed, as well as limited in legal enforcement authority. The Division's five affirmative action program staff and twenty-five consultants work simultaneously on over 75 investigations, with an active yearly case load of nearly 3,700. Its chief executive claimed only a 30% success rate in resolving discrimination complaints.

No doubt understaffing can account for at least part of the high percentage of unresolved complaints, but the lack of enforcement power is also to blame.

IN MASSACHUSETTS AND MICHIGAN

On the other hand, the Massachusetts Commission Against Discrimination and the Michigan Civil Rights Commission appear to have the power to deal with discrimination problems. They both negotiate, hold hearings, and can initiate court action, though final court orders must be enforced by the court. Unfortunately, although the power is there, the staff is not. The Massachusetts Commission appears to have the more serious staff problem. According to its chairperson, it employs 60 but needs 300.

IN TENNESSEE

Tennessee's Human Development Commission has neither adequate staff nor sufficient enforcement powers. It investigates, conciliates, and gives technical assistance with its limited staff of five, but its only power is the endorsement of the Governor. Governor Dunn seemed to have both the commitment and the power to eliminate discrimination, but progress has been slow. In January 1972 he established an affirmative action program. As of December 1973 two state agencies still had no minority employees. More than two-thirds of the 34 agencies included in the 1973 Consolidated Affirmative Action Report have minority employment that deviates by more than 5% from the 1970 minority population. Even more relevant are the 24 of the 34 reporting agencies which deviate more than 5% from the total minority percentage in state government. Corrections, mental health, and social services traditionally have preponderances of minorities, usually in low-paying, unskilled jobs. In 1973 over 50% of the minority persons employed by the Tennessee government were in these three agencies. Some Revenue Sharing dollars were spent by two of these three. It seems to the League that ORS has been remiss in its responsibility by failing to take a close look at the more detailed EEO4 forms which would document what appears to be discrimination. This criticism is particularly relevant in light of the fact that the Transportation Department, with a 90% white male work force, received nearly one-third of the state's revenue sharing dollars.

ANOTHER PROBLEM: FEDERAL FOOT-DRAGGING

If impotent agencies make state enforcement a lot less than it should be, the Office of Revenue Sharing's supine attitude about its job of policing the police makes us wonder if they think Section 122 is just one more piece of congressional rhetoric.

IN TEXAS

On February 1, 1975 the Texas League of Women Voters wrote a complaint alleging noncompliance with civil rights provisions of the general revenue sharing law to the U.S. Attorney General. A letter was also sent to Graham Watt, then director of the Office of Revenue Sharing, to notify him of the probable violation and to request that he use his authority to disallow the continued misuse of GRS funds by the state of Texas. Both letters were accompanied by extensive and full evidence to support the allegation of noncompliance.

Texas monitors had obtained data from the recently created governor's Office of Equal Employment Opportunity (EEO) which showed that women, blacks and ethnic minorities are underrepresented in Texas state employment and occupy a disproportionate share of the low-skilled, low-paying jobs. The data, collected and analyzed by the EEO, in part to meet requirements of the federal Equal Employment Opportunity Act of 1972, included employees from all state agencies.

Blacks, both male and female, held only 7.7% of the 70,976 jobs included in the governor's EEO study, while they make up 12.7% of the total state population according to the 1970 census. Spanish-surnamed individuals, comprising 18.5% of the population, held only 11.1% of the jobs. As salary levels increased minority percentages decreased. In the \$16,000 to \$24,999 range, 96.4% of the jobs were held by white non-Spanish-surnamed persons; 2.5% were held by Spanish-surnamed persons and 0.5% by blacks. Women constituted 41.3% of the state's employees, but held very few of the high paying jobs. The majority (57.4%) earned less than \$6,000; only 10.6% of the jobs at or above the \$16,000 level were held by women.

The record within the specific agencies that got state GRS funds is no better, and in some instances is much worse. Employment data for the forty-two agencies, commissions and courts receiving GRS funds shows that black employees in 1973 earned an average of \$5,585, a wage level far below the average of \$7,797 for white non-Spanish-surnamed persons. In these agencies, 79.9% of the black employees, 68.2% of the Spanish-surnamed, and 29.8% of the women earned \$6,000 or less. Of those earning \$16,000 or more, only 5.1% were Spanish-surnamed, 0.8% were black and 12% were female.

The Department of Justice began a full investigation of Texas state employment practices in October 1974, after getting numerous complaints of discriminatory practices from individuals in Texas and from federal level agencies as well.

On April 17, 1975, fully two and one-half months after the complaint was made public, the Office of Revenue Sharing sent a letter of inquiry to the governor explaining the nature of the League's charge of discrimination and requesting an explanation within thirty days.

The governor requested and was granted a ninety day extension. Meanwhile, the state of Texas continues to enjoy the uninhibited flow of GRS funds. Documentary evidence of employment discrimination has been on file with the federal Equal Employment Opportunity Commission since 1973 and is therefore available to the Office of Revenue Sharing. Furthermore, the evidence accompanied the February 4, 1975 letter from the Texas League of Women Voters to Graham Watt.

The Office of Revenue Sharing has had more than ample cause to initiate its own investigation into the probable misuse of general revenue sharing funds and to play its mandated role of either obtaining compliance or terminating GRS funds to the state. An ORS official stated on August 5, 1975 that the use of administrative proceedings against the state of Texas has not been ruled out as a means of obtaining compliance, but for the present ORS is working with the Department of Justice and is hopeful that the matter will be resolved without a suit. So far state officials have not responded to the Texas League about its complaint.

The pace of action by the Office of Revenue Sharing and the lack of any reaction at the state level call into question whether accountability has any real meaning in the GRS program. Redress for the employment discrimination of the magnitude discussed here, if left to a private court suit, could involve several years and costs running into tens of thousands of dollars. The citizens of Texas should not be forced to choose between accepting the state's continued employment discrimination or spending very large sums of time and money to pursue the

matter in court. Events to date have made a mockery of "power to the people" and citizen accountability in Texas. It can only be hoped that Justice Department action or a late awakening to responsibility on the part of the Texas government alters this current abuse of the law and the people.

IN MICHIGAN

The situation in Michigan is different. Here the ORS has played a somewhat more active role.

The Michigan controversy stems from the 1972 termination of federal financial assistance to the Ferndale School District for its refusal to desegregate the Grant Elementary School, as required by Title VI of the Civil Rights Act of 1964. This action, the first of its kind in a northern school district, took place only after the Department of Health, Education and Welfare used every resource to get voluntary compliance with the law. The full procedure, which took over four years from the initiation of the action in 1968 to final termination in 1972, was upheld by the Sixth Circuit Court of Appeals in 1973. By refusing to hear the case the U.S. Supreme Court endorsed the circuit court opinion.

ORS says that Michigan used its GRS funds for the state retirement system for public school teachers which is of direct value to the Ferndale School District; hence the action violated the antidiscrimination provisions of the GRS law. On November 14, 1974, the State of Michigan was advised by the Office of Revenue Sharing of the probable violation and requested a remedy or adequate defense of this expenditure within sixty days. None was presented; Governor Milliken, in a letter to ORS dated January 30, 1975, argued that the funds do not directly benefit the Ferndale School District and that no violation of the law had occurred.

The Office of Revenue Sharing chose not to pursue the matter under its own auspices, an action which could, and according to many civil rights advocates does, require the deferral of future revenue sharing payments to Michigan. Instead, it has asked the Department of Justice to take corrective action. The Department of Justice notified the Ferndale School District in a November 14, 1974 letter that it was not in compliance with Title VI and has since requested a written plan of action that will desegregate the Grant School. No constitutionally acceptable plan has been forthcoming. Consequently the Justice Department filed suit on May 24, 1975, against the district and included the State of Michigan as a defendant in the suit at the request of ORS.

Meanwhile the Grant School in Ferndale continues as an all-black facility and ORS money continues to flow into the state coffers.

While the Ferndale case slowly grinds its way through the courts, with small evidence of concern for the maxim that justice deferred is justice denied, the Michigan Department of Civil Rights has taken one significant action. On September 30, 1974 the Department's Executive Director issued a memorandum that sets forth "Recommendations For Action to Insure Equal Opportunity in Federal Revenue Sharing." These recommendations include the issuance of a nondiscrimination policy statement, an executive order specifically addressing nondiscrimination provisions of general revenue sharing, implementation of a review and monitoring program, the delegation of enforcement authority to the Department of Civil Rights and, perhaps most importantly, the appropriation of a portion of the state's GRS funds to implement and carry out these programs. Clearly, the development of this program is in part a response to the LWV's monitoring efforts.

We are unalterably committed to the principle that good government requires a vigilant citizenry—indeed, this commitment is the very base of our existence—but we question the viability of a program whose sole enforcement premises are citizen monitoring and the courts.

While the work of the League in Michigan and Texas must be commended, the amount of volunteer time at the state level and the professional time and money that went into the effort at the national project level must not be overlooked. Positive results are indeed satisfying, but the effort cannot be repeated in each of the 50 state and 38,000 local jurisdictions receiving GRS funds. The volunteer time and financial and professional resources involved in backing up such an effort would be enormous. Yet without these citizen efforts and absent some commitment on the part of federal agencies responsible for enforcing the law, GRS funding of discrimination by state governments is built into the program.

In conclusion, evidence shows that without federal level enforcement of civil rights provisions, state governments knowingly or unknowingly perpetuate the existing pattern of discrimination, particularly in state employment. There must be a federal level commitment to the eradication of racial, ethnic, and sex discrimination. If General Revenue Sharing is renewed, specifications must be written into the law, and the regulations carefully designed to carry out that commitment. Relying on the good will and intentions of state government officials will not suffice. Nor can we be content with the delegation of civil rights enforcement of federal law to state human rights agencies or civil rights commissions: such state agencies are typically understaffed and lacking in authority to give full redress in discrimination cases. Their cooperation should be solicited, but only as an accompaniment to a strong federal level enforcement effort.

In light of the abysmal civil rights enforcement record over the past three years, Congress should not endorse renewal of the program unless that renewal contains major changes in the civil rights provisions of the Act coupled with insistent congressional pressure for effective administration.

Mr. EDWARDS. Without objection, all of the statements in full will be entered into the record.

I yield to the gentleman from Massachusetts.

Mr. DRINAN. The five papers were excellent. This will be beneficial to the entire committee. I wonder about the recommendation that, since the ORS has been so dismal, the Justice Department should receive this mandate.

I concede that the Treasury does not think first about civil rights. Perhaps they think about collecting money in the IRS and giving it out in the ORS. But I wonder if we should leap from that by giving it to Justice. We heard this morning that there is not a single full-time professional at work at the Justice Department.

I think there was a recommendation that 300 people should be working at the professional level in civil rights enforcement at ORS. Is there any evidence to indicate that the Justice Department carry through such a mandate?

Mr. TAYLOR. I don't want to be put in the position of being a defender of the Department of Justice's record on civil rights because I have been a critic for so long. We are trying to balance the relative capacity and will of the two agencies to do the job.

Even in the limited area of revenue sharing where the Department of Justice has a subsidiary role, they have done a better job than the ORS.

Justice at least has seven cases in the court in which they have alleged revenue sharing as a part of the violation. That is part of 23 Justice public employment cases all told. As you know, the Office of Revenue Sharing has one enforcement action, and that was taken in the suit we brought when the court told them they had to do it.

The Justice Department has 35 investigations that it has initiated.

Mr. DRINAN. Suppose the Congress had put this in HUD or in HEW? If it were in HUD, would your reasoning be the same?

Mr. TAYLOR. What I am saying is that I have long been an advocate that the agency that receives the funding should have principal responsibility for enforcement. The recommendation that I am making and that others have made is not one that we would like to see generalized as to title VI as a whole.

At least HUD and at least HEW, both of which have deficient civil rights records these days, have some social mission which includes a responsiveness to the needs of low income and poor people and minorities in this country.

Treasury insistently says that it does not have such a mission, that it views itself as being outside the scope of title VI types of responsibilities, that its program is so different from all the other programs that this 5-year funding is a seamless web, and you can't break into it at any point.

I am saying reluctantly we reached the conclusion at this point that even with a stronger mandate, the agency is not likely to do the job. If you are saying is the Justice Department the only agency that might be able to carry out this kind of responsibility with respect to general revenue sharing if it were continued, I would not say that it is the only agency.

But there is at least in these times a degree of professionalism in that Department as to most of its matters, a degree of commitment to getting things done on time. I would have a lot more hope that results would be accomplished by a transfer than if the situation were to be left as it is now even with a stronger mandate.

Ms. PERRY. I was also one of the panelists that made that same recommendation. May I make a few comments on that?

Mr. DRINAN. Yes. It almost sounds like a recommendation made out of desperation. I am exploring this. I am inclined to think that we should go to another agency or create ORS as a separate agency outside of the Treasury, if that is necessary. Yes?

Ms. PERRY. The comment I wanted to make is that what all of these groups are saying is that we are looking for an effective and efficient remedy for civil rights enforcement. Now, we believe that if you compare the relative records of both the ORS and Justice Departments, whatever deficiencies the Justice Department has on their civil rights enforcement activities, they come out ahead of ORS. We are simply saying, put the enforcement where there is some demonstrable expertise and commitment in this area.

That is all we are saying. I don't want to be in the position of trying to defend the Justice Department's record at this point.

Mr. DRINAN. In all of the studies that have been done including the league and all, did the possibility ever arise of transferring ORS out of the Treasury into HUD or HEW or a separate agency?

Ms. PERRY. We have not examined that point.

Mr. TAYLOR. In talking about this problem, we have considered various kinds of solutions. For example, I would think that a sensible scheme of enforcement with respect to employment matters, discrimination in State and local employment might include giving cease and desist authority to the Equal Employment Opportunity Commission and then saying that when the EEOC determines that a violation exists, that new funds should be withheld, new appointments should be withheld or deferred until there was evidence that that violation was being corrected.

You could establish a similar scheme of enforcement with a new or existing agency with respect to public services discrimination. One of the reasons I have not made that recommendation is I am aware of the fact that Congress gave a good deal of consideration to cease and desist powers for EEOC a couple of years ago and did not see fit to grant those powers.

I can think of a number of enforcement schemes that would work but the one that I have proposed is in some respects tempered by what we deem to be the practicalities of the situation.

Mr. DRINAN. Thank you.

Mr. EDWARDS. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman. I would like to present a general question to the panel. We appreciate your testimony today. There are some conclusions stated in several of the statements about the abysmal civil rights enforcement record over the past 3 years.

These are rather strong statements. I realize that in a hearing such as this there is an attempt to make a record with as strong a statement as possible. But I would like to have any thoughts that you would care to express about the lack of comparisons in any of these statements suggesting exactly how much failure there is on the part of other Federal agencies that are concerned with civil rights. We have had some in the question and answer period here.

I gained the impression that you were saying, Mr. Taylor, that the ORS has done just a terrible job. But in some degree that is true in other areas.

The elimination of discrimination is not something that has occurred as a result of actions of other Federal agencies either. The focus seems to be on the Office of Revenue Sharing at these hearings but let's expand that a little bit.

What is really better?

Mr. TAYLOR. I would have to concede, Mr. Kindness, that this important means of securing equal opportunities, the use of Federal funds to assure that those who are supposedly to be the beneficiaries of Federal funds are indeed the beneficiaries has fallen into a period of great disuse.

The problems are not confined to the Office of Revenue Sharing. They exist in the Department of HUD, HEW, they exist in a number of agencies which have similar mandates. But it is a hard business to be saying—to be comparing these records of failure.

They are all pretty bad these days. The differentiation that I was making—and I stay with my statement—I think these words I have used are deeply felt feelings and we have been at this for 3 years, knocking at the door of the Office of Revenue Sharing, trying to represent clients, trying to help people and being frustrated at one turn after another.

The real difference is that the people at ORS don't acknowledge a civil rights responsibility to any real degree. They say our program is different and we hope never to have to utilize this fund cutoff remedy at all.

They don't even concede the necessity of saying that they will utilize it so that people will come into compliance. Other agencies have not gone quite that far. They have not generally renounced and abandoned the sanction that Congress gave them in the law.

I think that is really the difference.

Ms. STEWARD. My statement dealt with these specific problems of revenue sharing and the problems we have encountered in Jacksonville. We could have also provided you with documentation of failure of other agencies to respond or to enforce the powers that have been provided them by Congress.

I do think it is just a problem with the Office of Revenue Sharing. In many instances we do get a response from EEOC and the Depart-

ment of HEW, at least we have gotten a written response even though the response may say that "We will not make an investigation into your complaint at this time."

The differences with the ORS is that our complaint was filed in July 1975, and as of this date we have not received a response acknowledging receipt of that complaint.

Mr. KINDNESS. Might I ask Mr. Taylor, this report, "Civil Rights Under General Revenue Sharing," of the Center for National Policy Review of the law school, indicates that it was in part funded by the National Science Foundation grant number APR75-13993. Would you explain how that grant was obtained?

Mr. TAYLOR. It was obtained in response to a solicitation—an invitation to submit proposals. The National Science Foundation decided to investigate some eight or nine areas of the implementation of general revenue sharing including civil rights.

We received an announcement along, I assume, with thousands of others that NSF was conducting this investigation and did we want to submit a bid. We did. I don't know how many competing proposals there were. I understood there were really only one or two.

So I am not sure that it was a great award when we received the grant. But that is the process we went through.

Mr. KINDNESS. Ms. Kinkead—and this can be generally applied to the panel because I believe there are some other places in which the same sort of statements were made—comparisons were made in your statement on page 6 and elsewhere between the minority employment and public employment compared to the general population.

Would you care to comment on what that ratio is—whether that ratio is the correct one to use in making such evaluations or whether the ratio ought to be the ratio of minority persons in the area of public employment as compared to minority persons in the total work force?

Work force rather than general population is what I am getting at.

Ms. KINKEAD. We based our analysis of the EEO 4 form data this way because this is what the courts, I believe, have admitted as prima facie evidence of a possible violation.

Mr. KINDNESS. Does the League of Women Voters support use of that ratio rather than the population of working age?

Ms. KINKEAD. I would say that I think you find, particularly in times such as now when there is very high unemployment, that many of the people who have lost jobs first and who are now unemployed are minorities and women.

If you are talking about the work force, I think that probably would mean—if you are only using those working in certain agencies as a representative group, I think you probably would get an inaccurate comparison.

Mr. KINDNESS. Those who are unemployed and still seeking employment are a part of the work force?

Ms. KINKEAD. The Department of Labor has a statistic of error in which they say that by omission, there are now very high numbers of people who are unemployed, looking for work that are not counted. These tend to be minorities and women.

Mr. KINDNESS. My time has expired.

Mr. EDWARDS. Mr. Badillo?

Mr. BADILLO. Thank you, Mr. Chairman. I want to compliment all of you for having provided us with this information which is most appropriate since yesterday the Under Secretary could not find the kinds of examples that you have provided us with today.

I would now like to supplement what you have provided. I have been conducting my own governmental monitoring project in New York City.

Mr. Chairman, I would like to present some facts with respect to New York City which I think should be included in the report and which will point out that what has been reported here today does not merely apply to parts of the South. It applies to the northern cities—New York City as well.

In the city of New York for the fiscal year beginning July 1, 1973, through June 30, 1974, the city received \$268 million in general revenue sharing funds, the entire sum was applied to defray the expenses of the police, fire, and sanitation departments.

In fiscal 1975 the city received \$259,680,000 of which \$140,447,000 was put into the police department, \$69 million into the fire department, and \$51 million into the sanitation department.

Once again, police, fire, and sanitation. The same thing happened in fiscal 1976 when the city received \$263 million. Mr. Chairman, New York City's population is approximately 25 percent black and 15 percent Puerto Rican and Spanish. Employment patterns, if fair, should result in a reasonable allocation or representation of these minorities on the payrolls of the local agencies.

This is not the case. As of October 6, 1975, this week, the New York City Police Department consisted of 27,000 members. But only 2,072 or 7.5 percent were black and only 802 or 2 percent—2.9 percent—were Puerto Rican or Spanish. I could not obtain such statistics on employment of women, but I am sure they are comparable.

In the fire department, a 9,295-employee organization, there is difficulty counting the number of city employees. Of this number, 500 or 5.4 percent were black, and 84, or .9 percent were Spanish. For sanitation, 10,000 employees, I could obtain no data about the specific number of black employees on the payroll but they did employ 200 Puerto Ricans and the State estimates that the minority employment of blacks and Puerto Ricans in these agencies is between 2 and 3 percent.

Therefore these statistics indicate that during the past period of 3 years, New York City received \$790,980,000; all of which was spent for operational expenses of departments in a city where with approximately a 40-percent minority population, the departments themselves had a combined total of less than 10 percent minority employment.

The three departments together employ in excess of 46,000 people and of that only few are members of minority groups. It is impossible to look at these statistics and believe that New York City is making a good effort to comply with the civil rights requirements of the General Revenue Sharing Act.

To the best of my knowledge, ORS has made no investigation of the employment practices of New York City and is presently contemplating no such investigation. The same is true of the Justice Department. It is clear, Mr. Chairman, from this single but significant illustration of the expenditure of general revenue sharing funds by the city of New York that the civil rights provisions of the Revenue Sharing

Act are not being enforced and that amendments to the existing law to mandate enforcement are required.

I would like to ask unanimous consent to insert my full statement in the record.

Mr. DRINAN. Without objection it is submitted.

[The statement of Congressman Badillo follows:]

STATEMENT OF HON. HERMAN BADILLO DURING THE REVENUE SHARING OVERSIGHT HEARINGS OF THE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS OF THE HOUSE COMMITTEE ON THE JUDICIARY—OCTOBER 9, 1975

Mr. Chairman: Yesterday, when Under Secretary Edward C. Schmults was testifying before this subcommittee, several members expressed concern about ORS's failure to demand the implementation of fair employment practices. If my memory serves me correctly, Mr. Schmults was queried about the possibility that certain cities and localities may elect to use their share of the funds to finance the operations of programs that followed discriminatory hiring practices. The Under Secretary responded that he knew of no such instance. Unfortunately, I am in a position to document just such a case.

For the fiscal year beginning July 1, 1973 to June 30, 1974, New York City received \$268 million in General Revenue Sharing funds. The entire sum, *in toto*, was applied to defray the expenses of the police, fire, and sanitation departments. For fiscal 1975 the City received \$259,680,000, of which \$140,487,000 was added to the police department's budget, \$68,036,000 spent on the fire department, and \$51,157,000 on the sanitation department. The 1976 entitlement came to \$263.3 million. Despite the City's growing social problems, once again the money was used for the operational expenses of the uniformed services. \$154.6 million was earmarked for the police, \$60.8 for the fire, and \$41.9 for the sanitation department.

Mr. Chairman, New York City's population is approximately 25 percent Black and 15 percent Hispanic. Employment patterns, if fair, should result in reasonable representation of these minorities on the payrolls of local agencies. This is not the case. As of October 6, 1975, the New York City Police Department consisted of 27,000 members. Two thousand and seventy-two, or 7.5 percent, were Black; 802, or 2.9 percent, were Hispanic. I could obtain no statistics on the number of women officers.

The Fire Department had 9000 to 9500 employees. Of this number 500, or about 5.4 percent, were Black and 84, or .9 percent, were Hispanic.

The Sanitation Department had a 10,000 member workforce. I could obtain no data concerning Black employees on its payroll, but was informed that it did employ 200 Hispanics. Informally, the state estimates that minority employment in this agency is between 2 and 3 percent.

These statistics irrefutably indicate that during a period of three years, New York City received a total of \$790,980,000 dollars, all of which was spent for the operational expenses of departments that, in a city with approximately 40 percent minority population had a combined total of less than 10 percent minority employment! The three departments among them employ in excess of 46,000 individuals of whom only 3,574 were members of minority groups!

It is simply impossible to look at these statistics and believe that New York City is making a good-faith effort to comply with the civil rights requirements of the General Revenue Sharing statutes. Yet, to the best of my knowledge no investigation of the City's employment practices is being conducted—there are no outstanding complaints against the City pending, and none are contemplated.

It is clear from this single but significant illustration of the application of General Revenue Sharing funds by the City of New York that the civil rights provisions of the Revenue Sharing Act are not being enforced and that amendments to the existing law to mandate enforcement are required.

As a start, however, I would specifically recommend that this Subcommittee, after completing this series of hearings, consider an amendment to the General Revenue Sharing Act that would require that any regulations promulgated by the Treasury Department to enforce the non-discrimination provisions of the Act be submitted to the Judiciary Committee and to the Congress as a whole, prior to their enactment, and that Congress be given the right to disapprove such regulations.

Ms. PERRY. I think it is important to point out that in certain departments where you attempted to obtain statistics that there were no statistics available. I think that is very indicative of the priorities as far as women go in a number of jurisdictions that all of us have spoken about this afternoon.

Certainly in New York City, those of us in the South always look toward—in terms of leadership in certain areas, we would think that these statistics would be available.

Mr. BADILLO. We know that the police department up until recently would not hire women. As a matter of fact, they would not even hire men if they were under 5 feet, 8 inches. You can be certain that in the past year or so there has not been any significant increase in the number of women in the police department.

Mr. TAYLOR. I might comment briefly. I think the statistics that you have cited for New York City, which is my original home, are very similar to the statistics that we see in many other jurisdictions.

If you change the norm of comparison that Mr. Kindness suggests from population to the work force, you would see a lesser disparity but not in most places significantly lesser. There would still be a wide gap between actual representation in most departments and agencies and actual representation in the work force as a whole. What I would suspect it reflects in New York City as well as other places is the continued use of various kinds of tests that have not been validated and that very well may violate the law as declared by the Supreme Court in *Griggs v. Duke Power Company* and in the *Albemarle Paper* case last term.

On requirements such as the one Mrs. Stewart referred to as an agility test, the use of—the LEAA said 2 years ago that height requirements and similar tests had to be validated. You had to prove they were related to the requirement of the job or you could not use them.

Many jurisdictions still have those requirements and have not validated them. It is not a matter of bad faith in many cases but the failure to deal with practices that really exclude minorities.

Mr. DRINAN. Counsel?

Ms. McNAIR. Mr. Taylor, in line with the suggestion that possibly Congress ought to consider a transfer of authority to Justice, one of the things that concerns me is that ORS or Treasury would still have the sole and ultimate power to terminate funds or withhold funds. Presumably under some sort of transfer scheme Justice would only go before an administrative law judge who is representing the Treasury Department to request such a withholding or deferral.

In view of that, don't you think that such a scheme constitutes continued reliance on the primary offender?

Mr. TAYLOR. I don't know that there is an alternative to that in the general proposal I am putting forward. I don't know you can put in the Attorney General the actual power to terminate funds that are administered by another department. I would say that as you indicate, the Treasury Department would have the continued authority to make the adjudicative determination as to whether funds were actually to be deferred or to be terminated. But my feeling is that they will perform better in an adjudicative role than when they are given the responsibility to investigate and move these cases forward.

In other words the problems that we have had, for example, with other agencies have not been that when you get to the point of actually deferring the funds they make the wrong decisions. It is that they refuse ever to get to that point.

So that is the problem that we are trying to address in suggesting that the investigation and the responsibility for presenting cases on a timely basis be given to the Department of Justice.

Mr. BADILLO. Because of this problem of the authority to issue funds remaining in the Treasury Department, in my prepared statement I have suggested that one of the things we might do is to require that this committee and the Congress have the authority to review the proposed regulations of the Treasury Department with respect to the distribution of revenue-sharing funds.

If we can review the regulations, we can assure that the regulations mandate a certain type of action. We insure that the regulations mandate a time within which a final determination can be made. This authority I have found to be very useful in our Small Business Committee. Mr. Butler serves on that committee with me.

We have had the illustration this year where we have in effect sent the proposed regulations back to the Small Business Administration by turning them down in the committee. The Administration did not want to run the risk that we would be able to have them rejected in the full Congress. They got the hint and they went back and changed the regulations.

This power of reviewing regulations is the most important oversight power because we can convey a message very clearly to the Administration in situations where it has refused to take action.

Ms. McNAIR. I have one other question. Generally I have been concerned about those people who don't file complaints, those who don't know that revenue sharing exists, who don't know that they have rights under the Revenue Sharing Act.

I want to ask Ms. Steward whether, in her opinion, the average citizen in Jacksonville knows about the revenue-sharing program?

One of the things we heard yesterday from Under Secretary Schmults was a list of all the public relations pamphlets and materials sent out from Treasury. Some time ago the Attorney General suggested to Treasury that they should require the posting of notices at sites where revenue-sharing funds were being expended, posters describing the funding process, the anti-bias provisions and describing how to file complaints.

Treasury told us in September 1973 that they were not in the business of producing posters. I would like to know from you whether you think that sort of thing would be helpful, whether or not you think the ORS' public information program has been successful, at least in Jacksonville?

Ms. STEWARD. Of course not. In 1973 there was some attempt by citizens groups to delve into the whole business of revenue sharing in terms of its funding mechanism and how the moneys flowed from the Federal Government through the States and into the municipalities. It has taken us—those of us who are supposed to have some expertise in local government—it has taken us approximately 2 years to even run down where revenue-sharing funds were even used in the local community.

Not only that even today we still have not been able to determine exactly where a total of \$36 million has been spent and that includes the accrued interest in Jacksonville, Fla. We were only able to document after some lengthy persistence on our part some areas that we were keenly interested in and were keenly aware of the fact that there had been some discrimination such as in the areas of employment and expenditures of revenue-sharing moneys in areas of recreation.

I am convinced that the average citizen is not aware of revenue-sharing moneys. It is just another form of funds that come into the city of Jacksonville. They have no conceptual idea as to the kind of input citizens can have or ought to have.

Revenue sharing moneys have been caught up in the overall bureaucracies of the city and for the most part in the city of Jacksonville, if the citizens had input as we did in 1973 or attempted to provide input that recommending that \$1 million be used for social services, it is not left to the citizens and the local governments under the statute do not have to listen to citizens input anyhow.

Those of us who are aware of that statutory requirement have little faith in going to the local officials and requesting such funds for other kinds of general social services needs. It seems to me that that is one of the failures of the statute in that it has not required citizen input as such or any positive citizen control into how these funds are disbursed.

Mr. DRINAN. Counsel?

Mr. KLEE. In order to safeguard the guarantee of the 5-minute rule I yield to the gentleman from Ohio.

Mr. DRINAN. Mr. Kindness?

Mr. KINDNESS. In Ms. Perry's statement on page 4 there is a reference to the mayor of Asheville, N.C. Could you help us for the record to identify the nature of the mayor's job there? Is that a part-time mayor and is the mayor the executive or is there a city manager?

Ms. PERRY. Congressman Kindness, I don't have all of that information available with me this afternoon but I would indicate to you that in the report that was filed by the investigator who was in Asheville, N.C., it was indicated that the mayor had an affiliation with a local law firm.

It was not clear whether or not that affiliation was totally severed at the time he took responsibility as mayor in Asheville. It is my understanding that he is the chief executive officer in that town.

Mr. KINDNESS. They don't have a city manager?

Ms. PERRY. I don't think so. I can check that fact for you and give that information to you later.

Mr. KINDNESS. I would appreciate it because obviously if the mayor as in many cities is the ceremonial head and the president of the council, that would not necessarily—what would be pertinent would be what the actual executive head thought to be the case.

In the League of Women Voters' statement, Ms. Kinkad, you are referring to the Michigan situation in which revenue sharing funds were placed in the Teachers Retirement System Fund. I am a little curious as to what the alternatives in practical terms would be in a case like that. Let's assume as I suggest must be the case that the teachers retirement system was underfunded in Michigan and the alternatives might have been that either retired teachers pensions would be cut off or reduced or that future teachers would have no pensions or reduced pensions.

I am curious as to whether there is an implication there in this testimony that that sort of thing should occur and that the rights or privileges of that larger grouping of people need necessarily be adversely affected in order to satisfy this statement?

Ms. KINKEAD. I do not have the facts of the further implication of who is involved in the pension fund or whether or not it was underfunded at the time. I only know that after looking at that very carefully, that the Justice Department decided to sue and that the Office of Revenue Sharing requested that the State of Michigan be included as a defendant in that suit.

So I would assume that they felt that there was sufficient ground.

Mr. KINDNESS. That was not the case in which either the Justice Department or the ORS either requested or acted to defer revenue sharing funds; is that correct?

Ms. KINKEAD. No; they did not defer the funds.

Mr. KINDNESS. Would you suggest that that was an improper action or lack of action?

Ms. KINKEAD. Yes. It would seem to me that if they are in violation of law and if there has been a finding of discrimination, the funds should be deferred.

Mr. KINDNESS. No matter who is harmed by it?

Ms. KINKEAD. We don't know whether or not you are saying what would happen in the case if we don't know whether or not that retirement fund is in jeopardy.

Mr. KINDNESS. It is a little hard to make that answer, isn't it?

Ms. KINKEAD. It is, but you have to consider the fungibility problem involved with revenue sharing—that in most instances—we are not talking about a general fund here. If revenue sharing funds were deferred, we also then have to assume that they would not—that the State would not make up the difference, but if they had no revenue sharing funds to begin with, that possibly they would not put money into the plan.

Mr. KINDNESS. We are speaking about the formation or the basis for action in that case. I don't understand how you would make the teachers' retirement fund pure after that. How do you relieve it of the burden of discrimination?

Ms. KINKEAD. They are not challenging discrimination as I understand it of the pension fund itself, but of the fact that it did deal with and directly affects the school system and the problem of discrimination as found in the school district there.

They failed to desegregate.

Mr. KINDNESS. Are you alleging that the operation of the teachers retirement system was discriminatory?

Ms. KINKEAD. I am not saying that. That, as I understand it, was not the finding of the Justice Department, which was simply that by putting money into the teachers pension fund it did directly affect and benefit the school district which was in violation.

Mr. KINDNESS. And therefore the retirement fund might be adversely affected by cutting off future funds and that would be a desirable result?

Ms. KINKEAD. I don't feel—I don't follow that logic. Maybe I should defer to a lawyer. I don't understand that part of the question.

Mr. KINDNESS. My time is up. If there are others who want to question, that is fine.

Mr. DRINAN. We will let Mr. Klee proceed now.

Mr. KLEE. Again I would like to defer to the Member until he is through.

Mr. DRINAN. By unanimous consent we yield him an additional 2 minutes.

Mr. KINDNESS. Mr. Chairman, I would insist on my time under the rules.

Mr. DRINAN. An additional 5 minutes. I am sorry.

Mr. TAYLOR. To the extent that this is not contributing to any parliamentary situation, may I have an opportunity to comment on that?

Mr. DRINAN. The witness is recognized.

Mr. TAYLOR. The basic facts as I understand it in Ferndale are that the State did designate the money for educational purposes in a way that funds were attributable to particular school districts including the Ferndale School District. As Ms. Kinkead said, the education funds to the Ferndale School District had been terminated in 1972 because the district failed to comply with the requirements of title VI.

If the funds continued to be made available, these funds could be used to replace funds that have already been terminated. That I think is a very unacceptable situation, unacceptable under the law. As I understand your question, you say, won't some people get hurt if the funds are cut off?

I would say that there is a very simple alternative to that and that is compliance with the law. The argument or the question that you are raising was raised about title VI from the very inception. Aren't we going to be seeing welfare funds or education funds cut off to people who really need those funds?

The experience has been under the law that very few States have been willing to forgo these funds. They have come into compliance with the law when they have seen what the alternatives are. In those cases where they are not willing to come into compliance, legal redress is available through the courts which should have been used a long time ago in this case, so to bring them into compliance and then the funds become available. The deferred funds are not terminated or withdrawn from the State forever. They become available when the district comes into compliance with the law.

Mr. KINDNESS. Just to clarify that there is a difference of opinion here, such totalitarianism from the Federal level is not well received in all local government jurisdictions; and where the burden falls as harshly as what is suggested in this case, there could be quite a harsh reaction to it. I think what is suggested on my part as a more reasonable approach is that we should not direct all sorts of criticism at the ORS, if they do not in every case cut off or defer funds, or criticize the Department of Justice, if they do not in all cases request ORS to cut off or defer funds under the revenue-sharing program.

Mr. TAYLOR. I would say our objection is that—not that they don't do it in all cases but that they have not done it at all.

I have been familiar with the Ferndale situation for some time. I think if we had a chance to discuss the facts of that situation, you might see that what was done by the Ferndale School District was the most deliberate kind of segregation of students, the kind we were familiar with in many southern school systems years ago. Those children are suffering under a situation where they have been deliberately segregated and isolated in the schools.

I think it is the responsibility of the Federal Government not only under title VI or section 122 but under the Constitution of the United States, the 14th amendment, the fifth amendment, to make sure that that kind of discrimination ceases.

That is why we are in that unfortunate situation today.

Mr. KINDNESS. I would hope you would agree, however, that the burden ought not to fall unfairly upon innocent people either.

Mr. TAYLOR. I would agree with that and I think it need not fall on innocent people so long as measures are taken to correct discrimination which has persisted for many years.

Ms. PERRY. I would like to add one comment—

Mr. KINDNESS. I am sorry. There is one other point I would like to make. If we have more time, I would be happy. Mr. Taylor, on page 10 of your testimony there is reference to the Office of Revenue Sharing only recently getting into agreements with HEW and DOT and HUD, EEOC, and Justice. The testimony before the subcommittee yesterday indicated that really, the Office of Revenue Sharing has been the pioneer in these interagency agreements.

Although recent, would you care to comment on whether this trend appears to be a favorable one and that given time for these relationships to develop beyond the mere exchange of information, this might be an effective tool for coordinating the civil rights enforcement activities?

Mr. TAYLOR. In the right hands it could be effective. I am happy to hear you say that because it was our groups that suggested in the hearings on regulations that this technique be adopted because we were convinced that the ORS was not going to get sufficient staff to do the job.

The real problem, apart from the fact that it took them 2½ years to get around to concluding these agreements, is that basically they are the agreements for sharing information.

The key element in an agreement of this kind has to be a delegation of authority so that when HEW finds that a district has discriminated, we won't find ORS saying thank you for the information and now we will get around to investigating ourselves.

These can be pioneer workable agreements if the findings are made by the other agencies and are a predicate for action where it is needed.

Mr. KINDNESS. Thank you.

Mr. DRINAN. I have one question that anyone can answer if he or she wishes. I quote from Ms. Alice Kinkad's document on the old question of fungibility. She says on page 5 even assuming vigorous civil rights enforcement, the fungibility factors make real compliance an illusion.

That has been my unfortunate conclusion up to now. I wonder if any or all of you would want to react to that? In my bill I have provided for certain categories without being too rigid and have indicated that real accounting procedures should be kept so that the money is not nontraceable.

Mr. TAYLOR. We would support both the provision in your bill and that recommended by the GAO study that the requirement of nondiscrimination be extended to all the activities of a jurisdiction that receives revenue-sharing funds.

We would also strongly support better accounting and reporting provisions that would require a jurisdiction really to report not only

on the supposed uses of the funds but on the net impact of those uses on its budget. Both of those would be useful additions to the law.

It is difficult to get at where the money is really going but if you have this type of general aid, some effort has to be made to inform the Secretary of the Treasury and the Congress of the United States.

Congress is supporting a 5-year, \$7 billion law enforcement program on top of the LEAA, if you are to believe these planned use reports because they say 25 percent of the money is going for enforcement, police and enforcement activities.

One needs to get under those figures and find out where this money is really going.

If it is a \$7 billion program and that is what Congress feels is the wise collective judgment of all the State and local officials, that may be fine. But at least you ought to know about it.

Ms. STEWARD. I would like to say that I would agree. I agree with your proposal. It has been very difficult and it is going to continue to be difficult to trace revenue-sharing funds.

In addition to that, I strongly recommend that there be some written proposal that Congress can deal with in terms of citizens input. We are talking about positive kinds of input into how these funds are going to be distributed. We have found that the planned use report is very different from the actual use report when we actually determine where those funds go.

It is obviously a wide area of disparity there. It needs some correction.

Mr. DRINAN. My bill creates a citizen advisory committee and it provides certain funding for a staff person for citizen participation. Having been encouraged by all the responses to that, let me ask one other question. In Sarah Austin's document on page 10, it is not commonplace to acknowledge that general revenue sharing funds have tended to replace funds as expended. If we did, we can say that you must have a maintenance of effort and you may not use the general revenue sharing funds to defer taxes.

Would some or all of you want to comment? Should we go back to what Ms. Austin says is the original intent; namely, that general revenue sharing funds would supplement categorical grants and not replace them?

Ms. AUSTIN. That is why our national board voted for general revenue sharing in the beginning. Some of the mayors on our board felt the same way. They were surprised to find out they were not only not getting categorical funds but fewer funds.

There is a wide variation in the interpretation of human services. I think some people are building roads and calling them human services, and that is open to a lot of interpretation. One of the biggest advantages of our involvement in this project has been providing the citizens of local communities more information about programs.

It is literally impossible for local groups—we don't have the same kind of machinery that the bureaucracies have to track things. Much of the general revenue sharing money went into the general operating budget. It is difficult to track this.

There is really no way to track this. All of our constituents are very much concerned about this. As I indicated before, because of the

makeup of the national urban coalition and its local coalitions, the board had this heated discussion last week to decide whether they could support revenue sharing.

They said they could only support it if certain amendments were made.

Mr. DRINAN. In my bill, I say that with certain exceptions, at least 10 percent must go to the elderly and 10 percent to the poor.

Ms. AUSTIN. If citizens are organized, they can have influence on decisionmaking. It is only where people like us go out and organize them, it places the burden of proof on the citizens. In one city, they were able to go back to the mayor and insist that 10 percent of those funds be spent for human services.

Mr. DRINAN. That applies only to the local level. One-third goes to the State.

Ms. AUSTIN. We also have problems with that.

Mr. DRINAN. My time has probably expired.

Mr. KLEE. At the request of the chairman and in light of the late hour, I will pose just one question in this area. I notice that in most of your testimony, statistics seem to be a basis for inferring discrimination without any showing of intent.

I know that there is case law to support that in many of the circuits. I think some of the circuits are not yet decided on this issue. In light of the fact that this is a general program, do you feel that the statute as opposed to regulations or even departmental policy should specify the degree to which a statistic should be taken into account in implication of discrimination in a program?

Ms. AUSTIN. Just before we turn this over to the lawyer, I would like to say that some of us are very suspicious of statistics. We have had unfortunate experiences with them. It depends on who is using them. The reason we tried to give our case some live examples was that the people with whom we work warned us about statistics.

Mr. TAYLOR. I would say that you should not write—my recommendation would be that you not write into the statute anything concerning the utilization of statistics.

One of the great contributions I think that has been made, for example, by the Civil Rights Act of 1964 is that it states a reasonably broad mandate in setting out the substantive area of the law where discrimination is to be handled.

It is left to the agency and the courts to determine how best that mandate is to be interpreted. I think that for example in the area that you refer to, employment discrimination and the use of statistics, the courts have made a significant contribution by taking the mandate given by Congress and interpreting that.

Mr. KLEE. Before we adjourn, I think I would be remiss if I did not compliment you on your fine report for citing the example of the Indian Youth Center we have heard so much about. Thank you.

Ms. PERRY. In terms of your remarks concerning the necessity to show intent, I think the courts have taken a very practical approach on the intent question in employment discrimination. I think that they have said basically that intent does not matter.

It is really whether or not there is a disparate impact on the affected groups, minorities and women. I think that intent which is a subjective quality is a very, very difficult standard of proof to adhere to.

I think that I also have some problems with statistics, particularly in the South with rural areas which are always undercounted.

I would not recommend that statistics—a requirement for the degree of statistical proof be inserted into any regulation. I would point out that it is not intent that is the critical factor. It is the impact.

Mr. KLEE. The statistics provide a presumption of discrimination that the State has the opportunity to rebut under the 14th amendment, because if it can rebut it and there is no discrimination, then there is no violation.

In all of your experience in civil rights, are you familiar with any case in which a State has ever been able to rebut that presumption once it has been placed upon it?

Do any of the witnesses have any familiarity with a case like that?

Mr. TAYLOR. I am not familiar with any employment case in which a statistical presumption has been rebutted. It well may be in some situations that that burden has been sustained. I can't point you to a specific case. But I think certainly in employment, an employer has ample opportunity to show that the statistical disparities are not due to discriminatory practices. I'm not sure whether there are jury cases where a presumption has been rebutted. In schools there really isn't any such presumption.

In voting, of course, the Congress has made a statutory presumption in the Voting Rights Act of 1965. That is an irrebuttable presumption in most cases.

Mr. KLEE. This one seems to be fairly close to that, too.

Thank you, Mr. Chairman.

Mr. DRINAN. Mr. Kindness?

Ladies and gentlemen, I want to thank you once again. The meeting is adjourned.

[Whereupon, at 4:35 p.m., the subcommittee adjourned, subject to call of the Chair.]

[The following statement was submitted for the record:]

PREPARED STATEMENT OF MRS. RUTH FOUNTAIN BEFORE THE HOUSE JUDICIARY
SUBCOMMITTEE ON CIVIL RIGHTS COMPLIANCE FOR FEDERAL REVENUE SHARING

Mr. Chairman and members of the committee, my name is Ruth Fountain, and I am a member of the City Council of Aurora, Colo., presently serving my second term of office. I am a schoolteacher by profession.

Aurora is a suburb of metropolitan Denver and historically was and is a residential community supported principally by the military installations of Fitzsimons General Army Hospital, Lowry Air Force Base, Buckley Air National Guard Base and the Rocky Mountain Arsenal.

Prior to 1965 the population was less than 50,000 people, consisting of military personnel for the most part and civilians, the vast majority of which, were employed in the City and County of Denver. Not more than a dozen families lived in the City who, by legislative definition, would be classified as minorities.

By 1970 when Aurora's population had reached 70,000 people, the impact of the move into Aurora by minority groups became apparent. These were chiefly Black families in the military, and very transient in nature. There was then, and still is today, an exceptionally small Chicano population in Aurora.

Since 1970 we have grown to an estimated population of 130,000, and still being primarily a residential suburb, we have experienced a phenomenal influx of minority groups in both rental and home ownership occupancy. Proportionately, more minorities are now living in Aurora and *not* working in Aurora, than there were in 1970. This is due, we believe, to the following factors:

1. The ease and availability of welfare benefits in Adams County as opposed to Denver.

2. The busing of school children in Denver.

3. A continued pattern of migration to the suburbs from the core city of minority groups because of the availability of new and better housing.

In terms of percent of total population, it is now estimated that Aurora now exceeds Denver in minority population and as an employer, Aurora has not been able to immediately reflect or absorb into employment this rapid impact of minorities now living in Aurora.

We have now, however, made what we believe to be significant efforts to realistically deal with the problem by the following measures:

1. Established a Human Relations Commission in 1968.

2. Implemented an Affirmative Action Program in 1973.

3. Employed a minority relations consultant in both the school system and the City government.

4. Employed Dr. Fletcher to validate entrance and promotional tests, both physical and academic, for employment in the Aurora Police and Fire Departments.

5. Actively pursued a recruiting program to advise minority groups, living both in and out of the City of employment opportunities in Aurora.

6. Establishment of committees on military bases to assure compliance with E.E.O.C. guidelines.

7. Creation of a Housing Authority.

Despite our efforts, Aurora now finds itself involved in three (3) law suits, all alleging discriminatory practices in employment procedures, none of which are based on race or ethnic background, but in each case based upon sex and the failure of three Caucasian females to pass a physical agility test for entrance into our Police Academy.

While Aurora has actively sought a judicial determination of the issues involved, it has at the same time had an L.E.A.A. grant abated, which had been approved, and have been advised by representatives of the Office of Civil Rights Compliance that unless we rewrite our Affirmative Action Program and drop completely our physical agility requirements for employment in the Aurora Police Department—no L.E.A.A. funds would be approved and, in addition, if necessary, no Federal Revenue Sharing Funds would be forthcoming for Aurora.

At the same time, these representatives of O.C.R.C. were equally emphatic that there was no known physical agility tests which they would approve that would comply with E.E.O.C. guidelines nor would they permit L.E.A.A. funds to be expended to attempt to develop such a validated test.

The simple and uncontroverted result is that the Federal Government has legislated requirements for which they have no criteria or any demonstrable way of compliance with those guidelines and by the device of withholding Federal Funds, coerces the local government into submission, which results in an employee force based upon a quota system rather than on ability, merit, efficiency or realistic use of these same withheld federal funds.

What Aurora asks this Committee simply to do is to require the federal agency that invokes the E.E.O.C. guidelines as the basis for withholding of funds, to be able to provide the local community with validated tests and acceptable standards to comply with their own requirements. Further, that the federal agency stop enforcing impossible guidelines requirements on the basis of complaints filed after the fact and the inevitable stopping of federal funds and start an effective program of acceptable standards to follow before this point of no return is reached.

Thank you for this opportunity to appear before you today.



APPENDIX

CHINESE FOR AFFIRMATIVE ACTION (CAA),
San Francisco, Calif., October 24, 1975.

Congressman DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, House Judiciary
Committee, Room 2240, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN EDWARDS: As a community-based civil rights organization located in San Francisco, Chinese for Affirmative Action is very interested in the recent hearings conducted by your subcommittee on Civil and Constitutional Rights reviewing civil rights efforts under general revenue sharing. Unfortunately, we received your notice of the hearing too late to allow our participation. Hopefully, this letter will summarize some of our concerns.

Although the City of San Francisco conducted the required public hearings on the revenue sharing program, it was our feeling that many community organizations and residents were not aware of the provisions and requirements for general revenue sharing. The Chinese community, specifically, and San Franciscans in general, had very little input to the process prior to the publication of recommendations. Regardless of community needs, much of San Francisco's revenue sharing funds were spent to resolve Departmental budget deficits.

City officials in San Francisco have a historic practice of using the dilapidated and overcrowded conditions of Chinatown to strengthen their pleas for funds to San Francisco. Yet, in the distribution process on the local level, Chinatown is always placed low in priority for fundings when compared with the City as a whole and with other neighborhoods in San Francisco. This was once again the situation with revenue sharing funds. Of more than \$26 million allotted to San Francisco, only a little more than one percent was recommended for improvements in Chinatown, although the Chinese population in San Francisco is over 65,000, of a total of 680,000.

Upon notification of appropriations, a large proportion of revenue sharing funds was almost immediately set aside for the operating budgets of city departments. Unfortunately, many of these departments were and are in violation of the civil rights requirements of revenue sharing legislation. Here are a few examples as they relate to the Chinese community in San Francisco:

1. The San Francisco Police Department has had a history of discrimination in hiring practices against minorities in the form of non-job related physical requirements and biased exams. Today, there are five (5) Chinese officers on a force of 2000, a disappointing .2% in a City with 10% Chinese. Although it has been two years since Judge Peckham of the Federal District Court ordered the department to correct its discriminatory practices, constant delays and financial cutbacks by the S.F. Board of Supervisors have not increased the number of Chinese officers on the force. (Two Chinese cadets are currently training in the Police Academy.)

2. The San Francisco Courts have only two part-time court interpreters who speak Chinese. When the interpreters are unavailable, non-English speaking persons must have their court appearances delayed until the interpreters are free.

3. Persons who only speak Chinese cannot get emergency ambulance services because none of the dispatchers at the ambulance switchboard speak Chinese; nor do any of the medical stewards.

4. Non-English speaking persons do not have equal access to Police services because the S.F.P.D. does not have Chinese bilingual dispatchers either.

5. Although thousands of tourists and residents tramp through the streets of Chinatown daily, no provisions are made by the Department of Public Works to increase street cleaning in Chinatown.

Through these situations which we have encountered in the revenue sharing experience, we strongly feel that members of the Chinese community have been discriminated against by the City of San Francisco in: 1) access to services,

2) disproportionately low allocations for community-based programs, and 3) hiring policies.

Chinese for Affirmative Action strongly suggests that any new legislation that is being considered to extend the general revenue sharing program include stricter requirements for civil rights, more thorough investigations of complaints, and speedier use of enforcement procedures. Local officials should not be allowed to almost freely administer millions of dollars without taking the responsibility of protecting the rights of all its residents.

Sincerely,

HENRY DER,
Executive Director.

SOUTHERN GOVERNMENTAL MONITORING PROJECT,
Atlanta, Ga., October 23, 1975.

Hon. DON EDWARDS,
*Committee on the Judiciary,
House of Representatives,
Washington, D.C.*

DEAR CHAIRMAN EDWARDS: This is in response to your letter of October 17, 1975.

In reference to the information requested about Asheville, North Carolina, I have verified that this city employs both a mayor and city manager. However, it is quite clear from those interviewed that Mayor Richard Wood is much more than a ceremonial head and president of the Asheville City Council. Mayor Wood and the City Council actively participate in the management of the city. All decisions involving the local government, whether great or small, are made at the executive level by the mayor; his influence permeates every aspect of city government activity.

I hope this information will be helpful to the Committee. Please contact me if I may be of further service. Thank you for the opportunity to appear before the Committee.

Very truly yours,

SUSAN PERRY,
Staff Counsel.

THE UNDER SECRETARY OF THE TREASURY,
Washington, D.C., October 29, 1975.

The Honorable DON EDWARDS,
*Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the
Judiciary, U.S. House of Representatives, Washington, D.C.*

DEAR CHAIRMAN EDWARDS: Attached is a copy of a letter I am sending to Congressman Badillo regarding the discrimination case involving the Boston Fire Department about which he asked during my recent testimony before your Subcommittee. If there are no objections, and the deadline for printing the record of the hearings has not yet passed. I would appreciate it if you would make my letter part of the hearing record.

Sincerely yours,

EDWARD C. SCHMULTS.

THE UNDER SECRETARY OF THE TREASURY,
Washington, D.C., October 28, 1975.

The Honorable HERMAN BADILLO,
*Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. BADILLO: After my testimony before the Subcommittee on Civil and Constitutional Rights, I asked the Office of Revenue Sharing to provide a summary of the facts of the discrimination case involving the Boston Fire Department which you asked me about at the hearings. I would like to report to you on the matter as we understand it.

We are advised by the Department of Justice that there were actually two cases alleging discrimination in the Boston Fire Department. The first case was brought in late 1972 by the Boston Chapter of the NAACP and by Black and Spanish-surnamed individuals as a group. The Justice Department subsequently filed its action on January 24, 1973. With the consent of all parties the Court consolidated the two actions.

No allegation based upon revenue sharing was included because the revenue sharing Act had only recently been adopted and the Justice Department had received no information indicating that revenue sharing funds were being used by the Boston Fire Department. Boston's first two revenue sharing checks were dated December 11, 1972, and January 8, 1973. In March of 1974, however, ORS advised the Justice Department that audit information obtained by its auditors indicated that General Revenue Sharing funds had been appropriated for the Boston Fire Department. By that time, the law suit had been tried and the District Court had rendered its decision (on February 8, 1974). As a result, the Justice Department decided not to amend its suit at that point to include a revenue sharing violation count.

The U.S. District Court in Boston handed down its decree on February 8, 1974. The decree enjoined the City of Boston and the Massachusetts Division of Civil Service from engaging in any practice or act which "has the purpose or effect of" discriminating against any applicant or potential applicant for employment with the Boston Fire Department or other fire departments subject to Massachusetts civil service law.

The Court specifically cited certain hiring practices and certification procedures and the validity of written examinations given for the purpose of determining qualification for the selection of firefighters. The City of Boston was enjoined from requesting certificates of appointments for permanent positions on the Fire Department unless the City demonstrated it had contacted organizations in the Black and Spanish-surnamed communities and high schools and junior colleges with substantial Black and Spanish-surnamed enrollments to provide them with information regarding openings. Information was to be furnished regarding qualifications and selection procedures, rates of pay, hours of work, and the time, place and method of applying for vacancies.

Subsequently, the Commonwealth of Massachusetts appealed the case and on September 18, 1974, the U.S. Court of Appeals, First Circuit, affirmed the decision of the District Court. *Certiorari* was denied on application to the Supreme Court for reconsideration of the matter. An interim consent decree was entered on April 17, 1975.

We have received no indication from the Justice Department of any lack of compliance by the Boston Fire Department with the decree of the Court. Inasmuch as the goal of the Office of Revenue Sharing is to seek compliance with all applicable laws and regulations regarding nondiscrimination in the use of General Revenue Sharing funds, a decree of a court thereon and consent by parties involved is normally sufficient present evidence of the intention to comply, and the withholding of revenue sharing funds would not seem appropriate or necessary. The Office of Revenue Sharing civil rights compliance staff has been following the situation to assure that the City of Boston remains in compliance. ORS will take any further actions necessary should problems arise.

I am asking by separate letter to Chairman Edwards that, if you and the other members of the Subcommittee do not object, this letter be inserted into the hearing record.

If you have any further questions about the Boston case or any other matter relating to the revenue sharing program, I would be more than happy to assist you.

Sincerely yours,

EDWARD C. SCHMULTS.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C. November 15, 1975.

HON. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, 406 House Office
Building Annex, Washington, D.C.

DEAR MR. CHAIRMAN: Enclosed you will find the additional information which I agreed to provide during my testimony before your Subcommittee on the revenue sharing program. I regret the delay in transmitting these materials and hope that they are responsive and helpful to the Subcommittee.

Attachment No. 1 is an analysis of the cooperation agreement recently entered into by the Department of Justice and the Office of Revenue Sharing. The Commission's staff analysis of the nondiscrimination and related provisions of H.R. 8329 is labeled Attachment No. 2. Attachment No. 3 consists of the General Counsel's analysis of when deferral should be triggered in relationship to a Federal District court finding of discrimination. Attachment No. 4 addresses

the appropriateness of deferral and initiation of administrative proceedings by ORS subsequent to a court finding of discrimination when the plaintiffs in the discrimination suit have not sought such deferral nor has the court granted it.

In response to Representative Drinan's inquiry, I have determined through consultation with staff that the Commission has not made an in-depth assessment of the Justice Department's Executive Order 11764 coordination and oversight activity with respect to the Office of Revenue Sharing. The Commission noted in the report *The Federal Civil Rights Enforcement Effort—1974*, Volume IV, *To Provide Fiscal Assistance* that as of June 1975, the Department of Justice had reached no formal conclusion as to whether the Office of Revenue Sharing was covered by Title VI of the Civil Rights Act of 1964 and thus by Executive Order 11764. Although a forthcoming Commission report on Title VI enforcement briefly reviews the compliance activity of the Department of Justice with regard to revenue sharing, it is our understanding that the Department's activities were undertaken pursuant to obligations set out in the State and Local Fiscal Assistance Act of 1971 rather than in fulfillment of Executive Order 11764.

The final area of information concerns your request for additional examples which demonstrate the "fungibility" problem and the need for making the anti-bias prohibition apply to all activities of a jurisdiction. Commission staff have reviewed our files and have found no examples of this problem which have not already been presented to your Subcommittee. The absence of additional examples undoubtedly reflects the hitherto inadequate enforcement of the current nondiscrimination provision.

If you or other members of the Subcommittee have any questions about the enclosed materials, please have Ms. McNair get in touch with Bud Blakey or Jim Lyons.

Sincerely,

ARTHUR S. FLEMMING,
Chairman.

EVALUATION OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE OF REVENUE SHARING, DEPARTMENT OF THE TREASURY AND THE CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE REGARDING COORDINATION IN THE ENFORCEMENT OF THE NONDISCRIMINATION PROVISION OF SECTION 122 OF THE STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972

ATTACHMENT NO. I

A Memorandum of Understanding Between the Office of Revenue Sharing and the Civil Rights Division Regarding Coordination in the Enforcement of the Nondiscrimination Provision of Section 122 of the State and Local Fiscal Assistance Act of 1972¹ was signed in late September of 1975.² The stated purpose of the Memorandum of Understanding was to establish "coordination procedures in order to avoid inconsistency and duplication of effort."³ The two agencies agreed that the reason that the Memorandum was necessary was that the Office of Revenue Sharing (ORS) and the Civil Rights Division (CRD) have concurrent responsibilities for assuring compliance with Section 122.⁴ The Commission supports the signing of this Memorandum. Indeed, the need for an agreement between the Department of Justice is discussed in the Commission's

¹ 31 U.S.C. § 1242 (Supp. III, 1973).

² Memorandum of Understanding Between the Office of Revenue Sharing, Department of the Treasury, and the Civil Rights Division, Department of Justice, Regarding Coordination in the Enforcement of the Nondiscrimination Provision of Section 122 of the State and Local Fiscal Assistance Act of 1972, signed by J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, Department of Justice, Sept. 25, 1975, and John K. Parker, Acting Director, Office of Revenue Sharing, Department of the Treasury, Sept. 23, 1975 [hereinafter referred to as Memorandum of Understanding].

³ *Id.*

⁴ *Id.*

report, *The Federal Civil Rights Enforcement Effort—1974*, Vol. IV, *To Provide Fiscal Assistance*.⁶ After a careful review of the Memorandum, however, it is apparent that it contains two major deficiencies.

1. Purpose and Scope

The Memorandum of Understanding establishes coordination procedures pursuant to the Office of Revenue Sharing and Civil Rights Division responsibilities under Section 122 of the State and Local Fiscal Assistance Act of 1972.⁶ The Memorandum of Understanding does not refer to the need for interaction between the two agencies under Executive Order 11764.⁷ The Executive order directs the Attorney General to coordinate Federal agency enforcement of Title VI of the Civil Rights Act of 1964 and to prescribe standards and procedures for implementation of Title VI. This Commission holds that Section 122 of the State and Local Fiscal Assistance Act places on the Office of Revenue Sharing all the responsibilities which Title VI places on each Federal agency dispensing Federal assistance.⁸ We understand, too, that the Department of Justice considers that for all practical purposes the Office of Revenue Sharing is a Title VI agency within the meaning of Executive Order 11764. General Revenue sharing funds are used in a wide variety of programs or activities. They can be used in programs or activities already receiving Federal assistance from another agency and thus in programs or activities subject to the provisions of Title VI. It is a matter of interagency interest that consistent standards of compliance are applied to avoid conflicting determinations or resolutions. In order to establish procedures to minimize such conflict, the Memorandum of Understanding should have made clear that the Office of Revenue Sharing will comply with the Attorney General's Directions under the Executive order.⁹

2. Coverage

The Memorandum of Understanding addresses such matters as responsibility for handling complaints, notification of scheduled civil rights reviews, and sharing compliance information. The procedures outlined in the Memorandum are designed to avoid such problems as duplicative investigation of a single complaint and disruptive involvement by one agency in the investigations and reviews of the other agency. In short, the Memorandum addresses the mechanical aspects of coordination between the two agencies.

Nonetheless, the procedures do not address all the areas necessary to realize the Memorandum's stated purpose to "avoid inconsistency and duplication of effort"¹⁰ between the two agencies. The two agencies have not agreed in the Memorandum to apply the same standards of compliance to general revenue sharing recipients. Nor have they agreed to procedures including time frames, for Federal compliance activity. Moreover, there is nothing in the agreement which binds the two agencies to an acceptance of each others' investigative findings

⁶ U.S. Commission on Civil Rights, *The Federal Civil Rights Enforcement Effort—1974*, Vol. IV, *To Provide Fiscal Assistance* 114-119 (1975) [hereinafter referred to as *To Provide Fiscal Assistance*].

⁷ That Act provides that in the event of noncompliance, the Secretary of the Treasury is authorized to terminate funding or refer the matter to the Attorney General for civil action, 31 U.S.C. § 1242(c) (Supp. III, 1973). The Attorney General may also bring a civil suit against a recipient of general revenue sharing funds if there is "reason to believe that a State government or unit of local government is engaged in a pattern or practice in violation of the Act's prohibition of discrimination." 31 U.S.C. § 1242(b) (Supp. III, 1973). As a result of these authorities, both agencies may conduct compliance reviews and investigate complaints against revenue sharing recipients.

⁸ Exec. Order, No. 11764, "Nondiscrimination in Federally Assisted Programs," 3A C.F.R. 124 (Supp. 1975).

⁹ *To Provide Fiscal Assistance*, *supra* note 5.

¹⁰ It should be noted, however, that a serious weakness of the Attorney General's execution of duties under Executive Order 11764 is that no standards have been issued by the Attorney General pursuant to the Executive order. This problem is discussed in the Commission's forthcoming report *The Federal Civil Rights Enforcement Effort—1974*, Vol. VI, *To Extend Federal Financial Assistance* (in press).

¹¹ See p. 1 *supra*.

and determinations of recipients' compliance status. In sum, it contains nothing to prevent the two agencies from providing conflicting instructions to general revenue sharing recipients and nothing to guard against the need for one agency to replicate the other agency's compliance activity because of dissatisfaction with the quality of that activity.

ATTACHMENT NO. 2

Staff Analysis of the Nondiscrimination and Related Provisions of H.R. 8329

Section 122(a) of the State and Local Fiscal Assistance Act of 1971

This section provides:

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under subtitle A.

Section 122(a) of H.R. 8329

This section adds "religion" to the currently forbidden forms of discrimination, and expands application of the nondiscrimination provision to all programs and activities of governments receiving revenue sharing funds.

Comments on Section 122(a) of H.R. 8329

The inclusion of "religion" is a positive modification of the nondiscrimination provision. Application of the nondiscrimination provision to all programs and activities of revenue sharing recipients appears necessary to insure that revenue sharing money does not indirectly subsidize discrimination. This modification accords with a recommendation of this Commission, of the Comptroller General of the United States, and of numerous civil rights organizations.

Section 122(b) of the State and Local Fiscal Assistance Act of 1971

This section requires the Secretary of the Treasury to notify the Governor and request the Governor to secure compliance "whenever the Secretary determines that a (recipient government) has failed to comply" with the nondiscrimination provision. The section further provides:

If within a reasonable period of time the Governor fails or refuses to secure compliance, the Secretary is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or (3) to take such other action as may be provided by law.

Section 122(b) of H.R. 8329

In place of the present broad statutory delegation of enforcement authority, this section of the bill sets out a well-articulated and less discretionary enforcement scheme.

Subsection 122(b) (1) requires the Secretary of the Treasury to notify the Governor and request the Governor to secure compliance "whenever the Secretary has reason to believe" that a recipient government is not in compliance with the nondiscrimination provision. Subsection 122(b) (5) of the bill states:

... 'reason to believe' shall include, but not be limited to:

(A) a finding of discrimination by a Federal or State court or administrative agency;

(B) a determination of noncompliance made by Federal investigators acting pursuant to cooperation agreements under subsection (d);

(C) the filing of a lawsuit by the Attorney General alleging discrimination; or

(D) a determination by the Secretary that a State governor or unit of local government has violated section 122(a).

Subsection 122(b) (1) of the bill also specifies that the "terms and conditions" of voluntary compliance "shall be reduced to a written agreement approved by the Governor, the affected unit of local government, if applicable, the Secretary, and the Attorney General of the United States, and shall not become effective until 30 days after publication of such agreement in the Federal Register."

If 60 days after the Secretary's notice the Governor fails or refuses to secure compliance, subsection 122(b) (2) of the bill requires the Secretary to temporarily withhold further payments of revenue sharing funds to the noncomply-

ing government. The temporary withholding of funds is regulated by specified procedures which are meant to insure due process to affected governments and to advance the stages of enforcement action.

Under subsection 122(b) (3), a government whose funds are temporarily withheld can at any time request a hearing which the Secretary is required to conduct within 30 days of the request. The period of temporary fund withholding cannot extend beyond 120 days or 30 days after the conclusion of a requested hearing, whichever is longer. Prior to the expiration of the temporary withholding period (the longer of 120 days without a hearing or 30 days following conclusion of a requested hearing), the Secretary is required to make an express finding of the government's compliance status.

If the Secretary finds that the government is in compliance with the non-discrimination provision, payment of the withheld funds shall resume.

If the Secretary makes a finding of noncompliance, the Secretary is required by subsection 122(b) (3) to continue withholding payments and to:

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964, including termination and repayment of funds; or

(C) take such other action as may be provided by law.

Subsection 122(b) (2) further provides for the resumption of payment of withheld funds following a finding of noncompliance if

(A) such State government or unit of local government enters into a compliance agreement approved by the Secretary and the Attorney General of the United States (which agreement shall not become effective for purposes of such resumption until 60 days after publication in the Federal Register); or

(B) such State government or unit of local government complies fully with the final order or judgment of a Federal court, if that order or judgment covers all the matters raised by the Secretary in the notice issued . . .

Finally, subsection 122(b) (4) provides that the Secretary's compliance determination is subject to review by the appropriate U.S. Court of Appeals upon petition by any government or individual who is aggrieved by the Secretary's determination.

Comments on Section 122(b) of H.R. 8329

Now that the State and Local Fiscal Assistance Act has been in effect for nearly four years, there is a substantial body of evidence that the Secretary of the Treasury has not effectively exercised the statutory authority to enforce the nondiscrimination provision of the Act. In general, therefore, the substitution of mandatory enforcement procedures for discretionary enforcement authority represents a necessary and positive legislative change.

The provision requiring the temporary withholding of revenue sharing funds in an instance of presumptive noncompliance pending administrative proceedings is particularly positive in that it would help insure fulfillment of the Constitutional mandate that discrimination not occur in the expenditure and enjoyment of federal funds. This provision implements a recommendation made by this Commission after a careful review of the Treasury Department's enforcement record. We further believe that the court decisions in the *Robinson v. Schultz* and *U.S. v. City of Chicago* litigation demonstrate both the need for and the utility of such a provision.

Simultaneous expansion of the nondiscrimination provision to cover all programs and activities of revenue sharing recipients and provision for mandatory withholding in all instances of presumptive noncompliance could give rise to practical and legal problems. In 1971, the Commission noted that the fund cut-off sanction might in some instances be "too drastic for practical use," and we therefore advocated the establishment of a "comprehensive and flexible range of remedies to be used on a selective basis."

For the sake of clarity, it is appropriate to restate the Commission's position on the matter of expanded coverage of the nondiscrimination provision and also on the matter of mandatory deferral. The Commission believes that expansion of the nondiscrimination provision to cover all programs and activities of revenue sharing recipients is necessitated by the wide latitude of permissive uses of revenue sharing funds and the problem of "fungibility" which has been attested to by the Comptroller General of the United States and numerous civil rights organizations. Likewise, the Commission believes that federal funds must be withheld when there is prima facie evidence that they will be used to directly

perpetuate unconstitutional discrimination. The Commission has not, however, taken a position on whether there should be a mandatory withholding of revenue sharing funds when there is prima facie evidence of discrimination in a program or activity that is not directly funded by revenue sharing money.

H.R. 8329 does provide for mandatory withholding of funds in all instances of noncompliance with the expanded nondiscrimination provision. If, therefore, H.R. 8329 were enacted and if its provisions were stringently enforced, the revenue sharing program would become a powerful instrument for eliminating discrimination.

Section 122(c) of the State and Local Fiscal Assistance Act of 1971

This section pertaining to the enforcement authority of the Attorney General states in part: . . . the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

Section 122(c) of H.R. 8329

In setting forth the enforcement authority of the Attorney General, this section specifies some of the "appropriate" kinds of relief which a court may grant. It states in part: . . . the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, including the termination or repayment of funds available under this Act.

Comments on Section 122(c) of H.R. 8329

Specification of some kinds of relief which the courts may grant serves to clarify Congressional intent and to strengthen the statutory basis for judicial relief.

Section 122(d), (c), and (f) of H.R. 8329

Section 122 of H.R. 8329 contains three additional subsections pertaining to the enforcement of the nondiscrimination provision.

Subsection (d) requires the Secretary of the Treasury to prepare draft cooperation agreements "with each Federal agency which exercises review over the civil rights activities and compliance of State governments and units of local government" within 30 days of enactment of the law. The subsection provides that the cooperation agreements must be published in the Federal Register subject to a thirty-day public comment period, and shall be finalized within 30 days of the close of the public comment period. The subsection further specifies that:

The agreements shall describe the cooperative efforts to be undertaken (including the sharing of civil rights enforcement personnel and resources) to secure compliance with this section, and shall provide for the immediate notification of the Secretary by the Attorney General of any actions instituted under section 122(c) or under any other Federal civil rights statute or regulations issued thereunder.

The current State and Local Fiscal Assistance Act does not mandate such cooperative agreements.

Subsection (e) requires the Secretary of the Treasury "in consultation with the Attorney General" to issue regulations requiring recipient governments to submit whatever information may be required to determine compliance with the nondiscrimination section of the act. This subsection supplements the current statutory provision of Section 142 (which would be retained in H.R. 8329) that "The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the provisions of this title."

Subsection (f) provides for the authorization of such funds as may be necessary to carry out the purposes of the nondiscrimination section. The current State and Local Fiscal Assistance Act does not specifically authorize funds for this purpose.

Comments on Section 122(d), (e), and (f) of H.R. 8329

The additional three subsections should help to strengthen the enforcement of the nondiscrimination provision.

Section 125 of H.R. 8329

This section of the bill entitled "Private Remedies" contains two provisions which have no parallel in the current State and Local Fiscal Assistance Act. Subsection (a) mandates specific time limits for the administrative processing

of citizen complaints alleging violations of the act. Subsection (b) grants all persons the right to institute civil action to enforce the provisions of the act.

Comments on Section 125 of H.R. 8329

This new section augments the enforcement provisions set out in Section 122. The establishment of mandatory time limits for the administrative processing of citizen complaints should promote governmental responsiveness and effective enforcement of all provisions of the act. Establishment of a private right of legal action fulfills a recommendation of this Commission. In making this recommendation, we noted:

The Commission maintains that the Federal Government is responsible for ensuring that its revenues do not subsidize discrimination. Nevertheless, we believe that an aggrieved individual must have an opportunity to secure relief in those instances where the government fails to carry out its obligations. We further note that statutes which include a provision for the payment of legal fees have stimulated effective administrative enforcement of various Federal laws.

ATTACHMENT NO. 3

This nation's policy against racial discrimination is clear and unequivocal. The 14th Amendment forbids state action which denies any person "equal protection of the law." Although the 14th Amendment applies to the States, the Fifth Amendment operationally extends the prohibition against discrimination to federal action.¹

Enactment of the Civil Rights Act of 1964 provided the Federal Government with a mechanism by which it could effectively carry out its Fifth Amendment obligations. Title VI of the Civil Rights Act of 1964 (1) prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance; (2) authorizes and directs all federal agencies which provide such assistance to enforce the prohibition against discrimination; and (3) empowers the agencies to terminate financial assistance to effect compliance with the Act.²

The Federal courts have repeatedly emphasized the Constitutional and statutory duty of federal agencies to prevent discrimination in the programs they fund.

... recent cases indicate that both Title VI and the Fifth Amendment impose upon Federal officials not only the duty to refrain from participating in discriminating practices, but the affirmative duty to police the operations of and prevent such discrimination by State or local agencies funded by them. *NAACP, Western Region v. Brennan*, 360 F. Supp. 1006, at 1012 (D.C. D.C. 1973).³

In these cases defendants cannot in their discretion permit further advances of Federal assistance in violation of the statute, but have a duty to accomplish the purpose of the statute through administrative enforcement proceeding or by other legal means. *Adams v. Richardson*, 351 Supp. 636 at 641 (D.C. D.C. 1972).

The government's obligation to prevent discrimination in federally funded programs was reiterated in a recent court decision which specifically involved the Office of Revenue Sharing. Subsequent to a Federal District Court finding of racial discrimination in the Chicago Police Department which received substantial revenue sharing funds, the U. S. District Court for the District of Columbia ordered the Secretary of the Treasury to withhold future revenue sharing payments to the city. Another Federal court subsequently reviewed and upheld the propriety of this order noting:

Where recipients of Federal funds have engaged in unlawful discrimination, courts have been quick to require that Federal agencies refrain from participating in the discriminatory practices, and exercise affirmative duties to police compliance and prevent constitutional and statutorily prescribed discrimination. (*U.S. v. City of Chicago*, 9 E.P.D. 7429 at 7437).

In accordance with contemporary judicial decisions, the Commission believes that a Federal District court finding of discrimination in any program or activity receiving federal financial assistance obligates the funding agency to immedi-

¹ See *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Simpkins v. Moses H. Cone Memorial Hospital*, 323 F. 2d 939 (4th Cir. 1963), cert. denied, 376 U.S. 938 (1964).

² 42 U.S.C. 2000d.

³ See also, *Gautreaux v. Ramsey*, 448 F. 2d 731 (2nd Cir. 1971); *Hicks v. Weaver*, 302 F. Supp. 619 (E.D. La., 1969); *United States v. Frazier*, 297 F. Supp. 819 (N.D. Ala. 1968).

ately defer further assistance and to institute administrative enforcement proceedings. Our position in this matter takes into account the due process rights of recipients of federal assistance as well as the Constitutional and statutory obligations of the Federal Government to prevent discrimination.

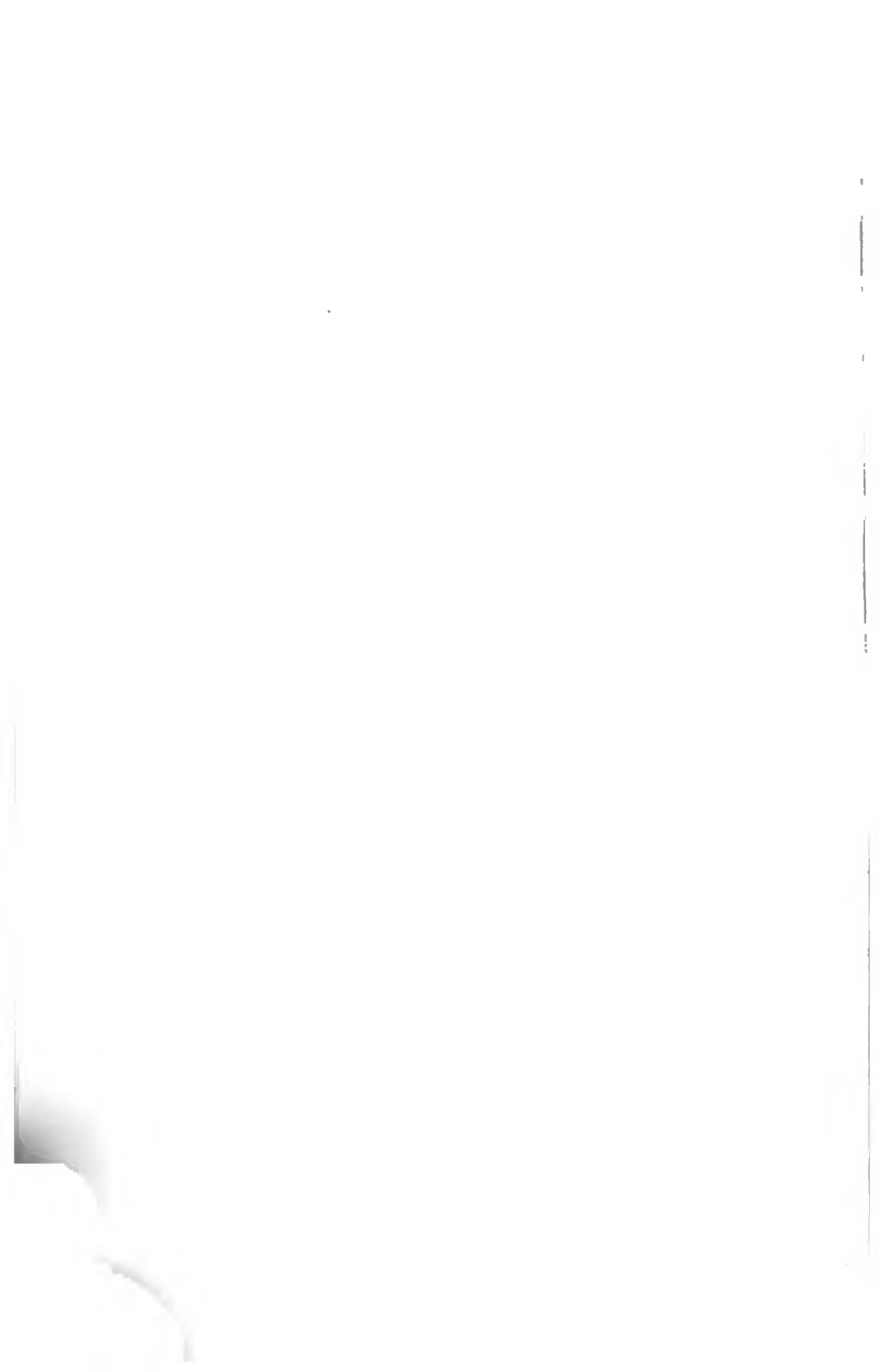
A recipient of federal financial assistance whose funds are deferred because of a Federal District Court finding of discrimination has the right to contest that finding. The process of judicial appeal, however, does not alter or postpone the federal funding agency's obligation to enforce the Constitutional and statutory prohibition against discrimination. To permit a federal agency to continue financial assistance during the often protracted course of appeals litigation would drastically erode the citizens' guarantee of nondiscriminatory treatment. The fact that deferral of financial assistance is accompanied by administrative proceedings and the fact that administrative proceedings are themselves subject to judicial review insures that due process is accorded to the recipients of federal aid whose funds are withheld.

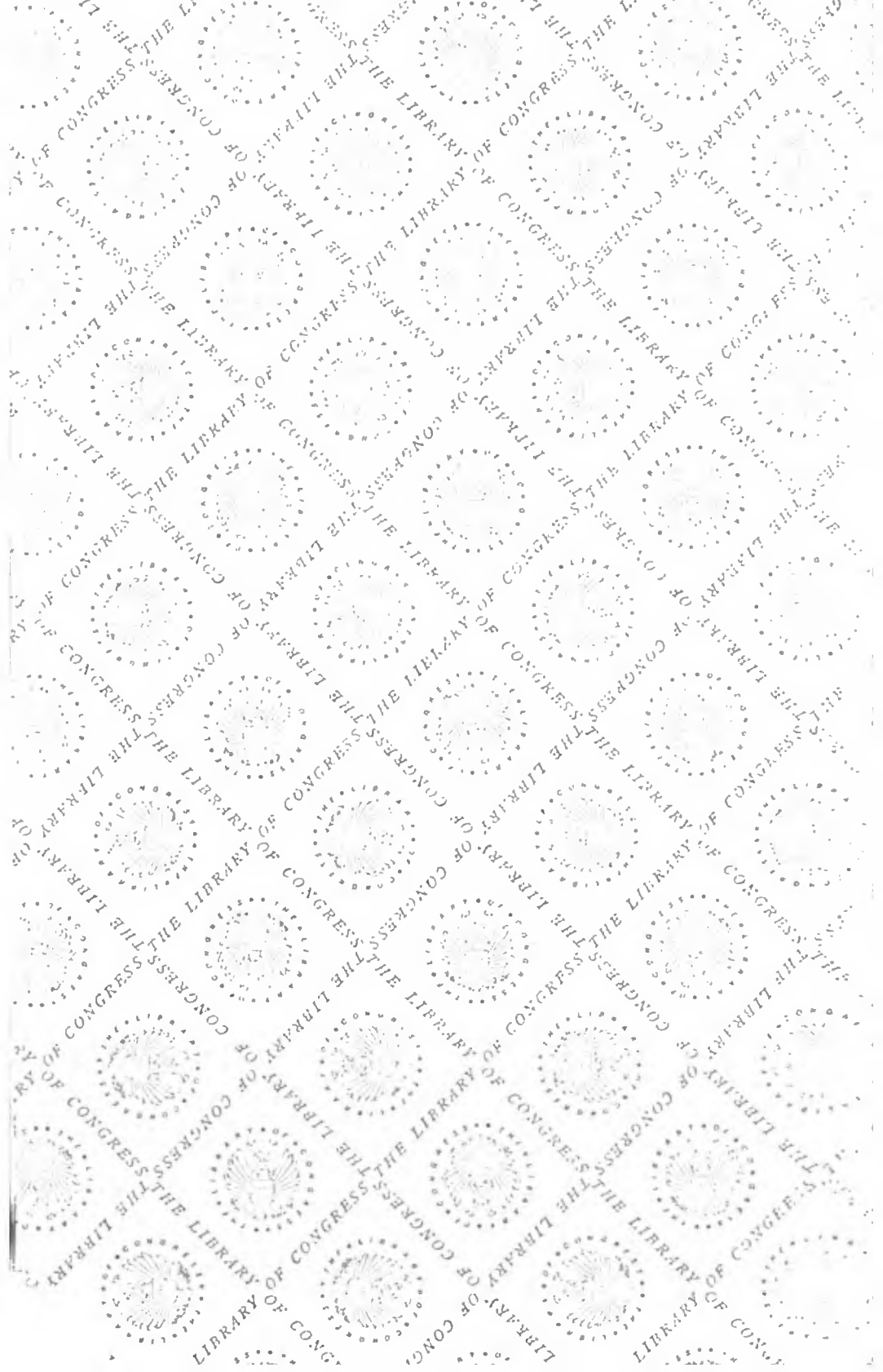
ATTACHMENT NO. 4

The Commission believes that it is appropriate for the Office of Revenue Sharing to defer funds and to initiate administrative proceedings when a federal court finds discrimination in a program or activity supported by revenue sharing money despite the fact that plaintiffs in the discrimination suit have not sought such deferral nor has the court ordered it. The Office of Revenue Sharing has a Constitutional and statutory obligation to insure nondiscrimination in the programs and activities it funds. This obligation is independent of the legal rights of individual citizens and the responsibilities of other federal agencies. The failure of a third party to seek specific relief or the inaction of a court in fashioning a specific remedy in no way relieves ORS of its duty to act against discrimination when a recipient of ORS funds has been found guilty of the same.









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